

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

INDIANAPOLIS

OFFICE MEMORANDUM

Date: August 8, 2002

To: Environmental Quality Service Council

From: Lori F. Kaplan
Commissioner

Subject: Wetland Information Packet

The enclosed information packet is intended to provide relevant background information on Indiana's wetlands, regulatory authorities and recent efforts to coordinate federal and state responsibilities. Specifically:

- Section one includes relevant statistics for the state, such as the acreage of wetlands in the state, the percent of Indiana's surface area covered by wetlands, the area and number potentially effected by the 2001 U.S. Supreme Court ruling, and the acreage of Tier II wetlands.
- Section two is a summary of state and federal regulatory programs effecting wetlands and other waters. The summary is divided into three parts: U.S. Army Corps of Engineers (USACOE), IDEM, and IDNR. Each part covers that agency's authority, jurisdiction, and procedures. This document is a pre-production version of a regulatory handbook that IDEM is producing to assist the public with permitting questions. This document is prefaced with an important note about the handbook and its use given recent federal and state legal actions.
- Section three is an April 2000 Final Report of the Waterways Permit Coordination Work Group formed in mid-1998 as described in p.3 of the report. The reprinted report was the product of a significant dialogue between the various agencies and members of the public on issues of streamlining administrative processes, improving inter-agency communication, and increasing education opportunities. One of the recommendations of this Work Group was to produce the handbook printed in Section two.
- Section four is the report of a sub-committee of the Waterways Permit Coordination Work Group that was formed to examine the feasibility of producing a single application form for IDEM, IDNR, and USACOE waterway permits. A key finding was that a joint application would actually increase the amount of work needed by many applicants as well as increase the number of reviews done by each agency by 61% to 270%. The USACOE, based in part on this report, formally declined to participate in a joint permitting program due to the increase in workload.

- Section five includes information on mitigation banking, including the draft Interagency Coordination Agreement and the USACOE's public notice of that agreement. The public comment period runs through August 9th.
- Section six includes maps depicting wetland distribution in the state of Indiana and other related information. The various maps depict the change in Indiana's wetland area over time, a frequency curve of Indiana's wetlands by size, the density of wetlands in several size classes and a summary of wetland mitigation compliance.

Wetland Informational Packet

Materials Provided for the Environmental Quality Service Council

August 8, 2002



**Indiana Department of Environmental Management
Office of Water Quality
Section 401 Water Quality Certification Program**

Program Contact: 317/233-2481

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Section 1

Key wetland statistics for the state of Indiana

Table 1. Key wetland statistics for the state of Indiana

WETLAND STATISTIC	AMOUNT
Total surface area of the state of Indiana (acres)	23,310,000
Estimate of wetland acreage in Indiana circa 1700	5,600,000
Wetland acreage in Indiana circa 1986 (National Wetland Inventory)	813,000
Percent of surface area of Indiana covered by wetlands circa 1700	24.1%
Percent of surface area of Indiana covered by wetlands circa 1986	3.5%
Estimate of waters (acreage) potentially affected by SWANCC v. USACOE	311,000
Percent of Indiana waters potentially affected by SWANCC v. USACOE	31%
Percent of total area of wetlands that are wholly or partially contained within managed lands (state, local, federal and private areas)	14%
Estimate of total acreage of wetlands designated as Tier II in IDEM's draft rules	5040
Percent of all Indiana wetlands that could be considered Tier II	0.6%
Percent of surface area of Indiana covered by Tier II wetlands	0.0002%
Percent of all Tier II wetlands located within managed areas (state, local, federal and private areas)	30% or more
Size distribution of wetlands	
Percent of Indiana's total wetlands that are 0.25 acres or less in size	11.6%
Percent of Indiana's total wetlands that are 0.50 acres or less in size	29.5%
Percent of Indiana's total wetlands that are 1.00 acres or less in size	46.9%
Percent of Indiana's total wetlands that are 5.00 acres or less in size	80.2%

Note:

8/7/02

Information compiled from the National Wetland Inventory maps for the state of Indiana, the Natural Resources Conservation Service, and the Indiana Department of Natural Resources – Division of Nature Preserves

Section 2

Overview of state and federal waterway regulatory programs

IMPORTANT NOTE:

The purpose of this handbook is to provide general information concerning the legal requirements that may apply when persons wish to engage in activities that would affect wetlands or other waters such as rivers, lakes, and streams. Given the complexity of state and federal regulations, this handbook gives a broad overview of key aspects of the regulatory process, such as the basic authorities of each agency, activities that are regulated, and information about required forms and notices. This handbook is general and is not determinative of any issue; nor does it establish or affect legal rights. Agency decisions in any particular case will be made by applying applicable law to the specific factual situations.

The U.S. Supreme Court decision regarding federal jurisdiction over isolated waters (Corps of Engineers v. Solid Waste Agency of Northern Cook County), has affected the authority of the federal government to regulate wetlands and other waters. Due to ongoing developments in both state and federal litigation, the reader is encouraged to contact the Department of Environmental Management to determine current legal obligations. Additionally, legislation and agency rulemaking will continue to shape the scope of wetland regulation, which will in turn affect your potential project. IDEM's web site provides current information on state and federal wetland regulations, which you may wish to consult during your project planning process:

<http://www.IN.gov/ideM/water/planbr/401/index.html>

Additionally, your particular project may require other permits from state, federal, or local agencies. You should be aware of the need for permits and your obligation to obtain any other permits or authorizations that may be required for your project. It is important to remember that in some cases, an activity and/or waterbody may not be regulated by one agency, but will be regulated by another. IDEM recommends consulting with various local agencies, such as your county surveyor, county plan commission, county highway department, and county health department when planning your project.

Part I.

U.S. Army Corps of Engineers



**US Army Corps
of Engineers®**

Types of activities that require authorization

The U.S. Army Corps of Engineers (Corps of Engineers) regulates the discharge of dredged or fill material into all waters of the United States (including most wetlands); the construction of any dam or dike across any navigable water of the United States; and structures or work in or affecting navigable waters of the United States. Corps of Engineers regulations apply to both permanent and temporary work. Examples of temporary discharge include dewatering of dredged material before final disposal or temporary fills for access roadways, cofferdams, storage and work areas.

Some examples of activities requiring a Section 404 Permit:

- Construction of piers, wharves, bulkheads, dolphins, marinas, ramps, floats, intake structures, and cable or pipeline crossings.
- Dredging and some excavation.
- Depositing of fill or dredged material in waters of the U.S. or adjacent wetlands.
- Site development fill for residential, commercial, or recreational developments.
- Construction of revetments, groins, breakwaters, levees, dams, dikes, and weirs.
- Placement of riprap and road fills.

History and authority of the Corps of Engineers

The Corps of Engineers began regulating the nation's waters in 1899 when Congress passed the Rivers and Harbors Act. The primary focus of this Act was the protection of navigation. In 1968, increasing national concern for the environment and water resources led to the adoption of "Public Interest Review." Using this process, the Corps of Engineers considers fish and wildlife values, conservation, pollution, aesthetics, ecology, and other public interest factors in its review of projects.

In order to further promote water quality, Congress passed the Federal Water Pollution Control Act Amendments of 1972 (more commonly known as the Clean Water Act). Section 404 of that Act established a permit program to regulate discharges of dredged or

fill material into waters of the United States at specified disposal sites. More specifically, Section 404 jurisdiction is defined as encompassing Section 10 waters plus their tributaries and adjacent wetlands and isolated waters where the use, degradation, or destruction of such waters could affect interstate or foreign commerce.

New laws and policies since that time, including the Clean Water Act of 1977, have further revised the Corps of Engineers Section 404 authority. The regulations also clarified that a 404 permit cannot be issued unless the proposed project complies with the Environmental Protection Agency's 404(b)(1) guidelines. These guidelines are designed to protect wetlands and other special aquatic sites from unnecessary destruction or degradation.

The following laws define the regulatory authorities and responsibilities of the Corps of Engineers:

Section 9 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401) authorizes the Corps of Engineers to regulate the construction of any dam or dike across navigable waters of the United States.

Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) authorizes the Corps of Engineers to regulate certain structures or work in or affecting navigable waters of the United States.

Section 404 of the Clean Water Act (33 U.S.C. 1344) authorizes the Corps of Engineers to regulate the discharge of dredged or fill material into waters of the United States.

Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (33 U.S.C. 1413) authorizes the Corps of Engineers to regulate the transportation of dredged material for the purpose of disposal in the ocean.

The Corps of Engineers also coordinates compliance with related federal laws:

National Environmental Policy Act
Marine Mammal Protection Act
Fish and Wildlife Coordination Act
Wild and Scenic Rivers Act
Endangered Species Act
National Fishing Enhancement Act
National Historic Preservation Act
National Flood Insurance Act of 1968 (as amended)
Deepwater Port Act
Executive Order 11988 on Flood Management
Federal Power Act

Jurisdiction

The Corps of Engineers regulations broadly define two important terms.

“Waters of the United States” (Section 404 of the Clean Water Act)

The definition of “waters of the United States” includes the following:

- a. Navigable waters of the United States.
- b. Wetlands.
- c. Tributaries to navigable waters of the United States, including adjacent wetlands and lakes and ponds.
- d. Interstate waters and their tributaries, including adjacent wetlands.
- e. All other waters of the United States not identified above, such as isolated wetlands, intermittent streams, and other waters that are not part of a tributary system to interstate waters or to navigable waters of the United States, where the use, degradation or destruction of these waters could affect interstate or foreign commerce. Section 404 of the Clean Water Act defines the landward limit of jurisdiction as the high tide line in tidal waters and the ordinary high water mark as the limit in non-tidal waters. When adjacent wetlands are present, the limit of jurisdiction extends to the limit of the wetland.

“Navigable Waters of the United States” (Section 10 of the Rivers and Harbors Act) This term includes the oceans and navigable coastal and inland waters, lakes, rivers, and streams. Corps of Engineers jurisdiction extends shoreward to the mean high water line. The Corps of Engineers’ general definition of navigable waters of the United States is “those waters subject to the ebb and flow of the tide shoreward to the mean high water mark and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. A determination of navigability, once made, applies laterally over the entire surface of the water body, and is not extinguished by later actions or events which impede or destroy navigable capacity.”

Permits

Types of Permits

The Corps of Engineers issues a variety of permits to authorize activities in waters of the United States. These permits are broadly categorized as either general permits or individual permits.

General Permits apply to activities that are substantially similar in nature and cause minimal environmental impacts, individually and cumulatively. There are two kinds of general permits:

Nationwide General Permits — these permits are issued by the Corps of Engineers’ Washington D.C. office for minor projects in certain areas. Some examples are aids to navigation which meet U.S. Coast Guard requirements, outfalls and intakes which have received a National Pollutant Discharge Elimination System (NPDES) permit, single private mooring buoys, backfill and bedding for utility lines, minor bank stabilization, and minor road crossings. All nationwide permits have special conditions that must be met in order for a project to qualify for nationwide permit status. Some nationwide permits also require pre-discharge notification to the Corps of Engineers before work begins.

Regional General Permits (RGP) — these permits apply to certain minor activities authorized by the Corps of Engineers on a regional or statewide basis. The RGP streamlines the current permitting process for projects with minimal impacts. In general, the Indiana RGP can be used by the Corps of Engineers to authorize most projects that affect less than 1 acre of waters of the United States, including wetlands, provided the project complies with the terms and general conditions of the RGP.

The Corps of Engineers does not require a detailed review for the activities covered by general permits. However, written verification of regional permit eligibility is necessary from the Corps of Engineers for work covered under regional permits, and some nationwide permits require notification to the Corps of Engineers. The Corps of Engineers also has the final authority to modify or override nationwide permits, so you are advised to obtain written verification that your activity falls under the criteria applicable to the specific permit before beginning work.

Individual Permits apply to activities that do not fall under the criteria for a general permit. Consult a Corps of Engineers representative early to find out what information will be required during the review process. If your project requires an individual permit, the Corps of Engineers issues a public notice advising all interested parties of the proposed activity. This public notice process helps the Corps of Engineers evaluate the probable impact of the project as part of the public interest review.

Contact your Corps of Engineers district office for more information on permits (see the back cover for contact information).

NOTE: Part of the Corps of Engineers’ permit process is to require certification from the state that your project doesn’t violate state water quality standards. That is, you cannot receive a Corps of Engineers permit without also receiving a Water Quality Certification from IDEM (see page 7).



How the Corps of Engineers reviews your project

The Corps of Engineers bases its permit decision on a process called *Public Interest Review*, a public interest balancing process where the benefits of the project are balanced against the detriments. Benefits and detriments are weighed by considering effects on items such as conservation, economics, aesthetics, wetlands, cultural values, navigation, fish and wildlife values, water supply, water quality, energy needs, safety, and any other factors judged important to the needs and welfare of the people.

The following general criteria are considered in evaluating all applications:

- the relative extent of the public and private need for the proposed activity;
- where unresolved conflicts of resource use exist, the practicability of using reasonable alternative locations and methods to accomplish the objective of the proposed activity; and
- the extent and permanence of the beneficial and/or detrimental effects the proposed project may have on public and private uses to which the area is suited.

A permit will be granted unless the proposal is found to be contrary to the public interest.

Evaluating General Permit Applications

The Corps of Engineers uses a streamlined procedure to process applications for activities authorized by general permits. The Corps of Engineers does not require a detailed review for activities authorized by general permits; however, it recommends that you obtain written authorization before you proceed with any work.

Evaluating Individual Permit Applications

The Corps of Engineers will begin evaluating your application for an individual permit as soon as it receives all the required information. The Corps of Engineers will send you an acknowledgment of its receipt of your application and the file number assigned to your project. You should refer to this number when inquiring about your application.

Individual permit applications must include a detailed project description and drawings. Review may also involve site visits, coordination with other agencies, and data analysis. The Corps of Engineers bases its decision to issue the permit on the evaluation of impacts during the Public Interest Review process. In addition, for activities under Section 404 of the Clean Water Act, the Corps of Engineers also evaluates the project's compliance with the 404(b)(1) guidelines.

The Corps of Engineers gives consideration and appropriate weight to comments of federal, state, and local agencies and other experts, as well as the general public.

The 404(b)(1) guidelines, prepared by the U.S. Environmental Protection Agency in consultation with the Corps of Engineers, are the federal environmental regulations for evaluating the filling of waters and wetlands. The guidelines restrict discharges of dredged or fill material where less environmentally damaging, practicable alternatives exist. The guidelines prohibit discharges:

- which result in violation of state or federal water quality standards, the Endangered Species Act, and the Marine Sanctuaries Act;
- which cause or contribute to significant degradation of waters and wetlands;
- if all appropriate and practical mitigation has not been taken; or
- if there is not sufficient information to determine compliance with the guidelines.

As a part of the review, the Corps of Engineers, not the applicant, first defines the "basic project purpose" of the proposed activity. The applicant gathers all necessary data for the evaluation of practicable alternatives for the project

consistent with the analysis of alternatives reviewed by the Corps of Engineers. The guidelines also assume that alternatives exist for non-water dependent projects. It is important to understand that if a less damaging practicable alternative to the project exists, the Corps of Engineers will not issue the permit. When unavoidable impacts occur, the Corps of Engineers requires all appropriate and practicable action be taken to mitigate such impacts.

A permit will be granted unless the proposal is found to be contrary to the public interest or if it does not comply with the 404(b)(1) guidelines.

How Long Will it Take to Process My Application?

Processing time usually takes 60 to 120 days unless a public hearing is required or an environmental statement must be prepared. Time frames will vary depending on the complexity of the project, and applicants are encouraged to contact the Corps of Engineers early in the planning stages of any project that is within the Corps of Engineers' jurisdiction.

Are There Fees?

Fees are required for most permits. There is a \$10 fee for a permit for a non-commercial activity; \$100 will be charged for a permit for a commercial or industrial activity. The district engineer will make the final decision as to the amount of the fee. Do not send a fee when you submit an application. When the Corps of Engineers issues a permit, you will be notified and asked to submit the required fee, payable to the Treasurer of the United States. No fees are charged for transferring a permit from one property owner to another, for any activities authorized by a general permit, or for permits to governmental agencies.



Filling out the application form

The Corps of Engineers has an official application form called the *Engineer Form 4345, Application of a Department of the Army Permit*, which must be used when applying for authorization.

The following instructions will guide you through the form and the information required in each section.

Blocks 1 through 4.

No entries required. These blocks will be completed by the Corps of Engineers.

Block 5 - Applicant's Name.

Enter the name of the responsible party or parties. If the responsible party is an agency, company, corporation, or other organization, indicate the responsible officer and title. If more than one party is associated with the application, please attach a sheet with the necessary information marked **Block 5**.

Block 6 - Address of Applicant.

Please provide the full address of the party or parties responsible for the application. If more space is needed, attach an extra sheet of paper marked **Block 6**.

Block 7 - Applicant Telephone Number(s).

Please provide the numbers where each party can usually be reached during normal business hours.

Blocks 8 through 11.

These blocks only require completion if you choose to have an agent. Otherwise, skip to Block 12.

Block 8 - Authorized Agent's Name and Title.

Indicate the name of the individual or agency that you designate to represent you in this process. An agent can be an attorney, builder, contractor, engineer, or any other person or organization. *Note: An agent is **not** required.*

Blocks 9 and 10 - Agent's Address and Telephone Number.

Please provide the complete mailing address of the agent, along with the telephone number where he/she can be reached during normal business hours.

Block 11 - Statement of Authorization.

Authorizes the agent to act on your behalf.

Block 12 - Proposed Project Name or Title.

Please provide a name identifying the proposed project (e.g., Landmark Plaza, Burned Hills Subdivision, or Edsall Commercial Center).

Block 13 - Name of Water body.

Please provide the name of any stream, lake, marsh, or other waterway that would be directly impacted by the activity. If it is a minor (no name) stream, identify the water body that the minor stream enters.

Block 14 - Proposed Project Street Address.

If the proposed project is located at a site having a street address (not a box number), please enter the address here.

Block 15 - Location of Proposed Project.

Enter the county and state where the proposed project is located. If more space is required, please attach a sheet with the necessary information marked **Block 15**.

Block 16 - Other Location Descriptions.

If available, provide the section, township, and range of the site and/or the latitude and longitude. You may also provide a description of the proposed project location, such as lot numbers or tract numbers, or you may choose to locate the proposed project site from a known point (such as the right descending bank of Smith Creek, one mile down from the Highway 14 bridge). If your project is along a large river or stream, include the river mile of the proposed project site, if known.

Block 17 - Directions to the Site.

Provide directions to the site from a known location or landmark. Include highway and street numbers as well as names. Also provide distances from known locations and any other information that would assist in locating the site.

Block 18 - Nature of Activity.

Describe the overall activity or project. Give appropriate dimensions of structures such as wingwalls, dikes (identify the materials to be used in construction, as well as the methods by which the work is to be done), or excavations (length, width, and height). Indicate whether discharge of dredged or fill material is involved. Also, identify any structure to be constructed on a fill, piles, or float-supported platform. The written descriptions and illustrations are an important part of the application. Please describe, in detail, what you wish to do. If more space is needed, attach extra sheets of paper marked **Block 18**.

Block 19 - Proposed Project Purpose.

Describe the purpose and need for the proposed project. What will it be used for and why? Also include a brief description of any related activities to be developed as the result of the proposed project. Give the approximate dates you plan to both begin and complete all work.

Blocks 20 through 22.

These blocks only require completion if dredged and/or fill material is to be discharged. Otherwise skip to block 23.

Block 20 - Reason(s) for Discharge.

If the activity involves the discharge of dredged and/or fill material into a wetland or other water body, including the temporary placement of material, explain the specific purpose of the placement of the material (such as erosion control).

Block 21 - Type(s) of Material Being Discharged and the Amount of Each Type in Cubic Yards.

Describe the material to be discharged and amount of each material to be discharged within Corps of Engineers jurisdiction. Please be sure this description will agree with your illustrations. Discharge material includes: rock, sand, clay, concrete, etc.

Block 22 - Surface Area of Wetlands or Other Waters to be Filled.

Describe the area to be filled at each location. Specifically identify the surface areas, or parts thereof, to be filled. Also include the means by which the discharge is to be done (backhoe, dragline, etc.). If dredged material is to be discharged on an upland site, identify the site and the steps to be taken (if necessary) to prevent runoff from the dredged material back into a water body. If more space is needed, attach an extra sheet of paper marked **Block 22**.

Block 23 - Is Any Portion of the Work Already Complete?

Provide background on any part of the proposed project that is already completed. Describe the area already developed, structures completed, any dredged or fill material already discharged, the type of material, volume in cubic yards, and acres filled (if the discharge was made into a wetland or other water body). If the work was done under an existing Corps of Engineers permit, identify the authorization if possible.

Block 24 - Names and Addresses of Adjoining Property Owners.

List complete names and full mailing addresses of the adjacent property owners (public and private), lessees, etc., whose property adjoins the water body or aquatic site where the work is being proposed, so that they may be notified of the proposed activity (usually by public notice). If more space is needed, attach an extra sheet of paper marked **Block 24**.

Note: Information regarding adjacent landowners is usually available through the office of the tax assessor in the county or counties where the project is to be developed.

Block 25 - Information About Approvals or Denials by Other Agencies.

In addition to Corps of Engineers authorization, you may need the approval of other federal, state, or local agencies for your project. Identify any applications you have submitted and the status, if any (approved or denied), of each application. You do not need to have obtained all other permits before applying for a Corps of Engineers permit.

Block 26 - Signature of Applicant or Agent.

The application must be signed by the owner or other authorized party (agent). This signature shall be an affirmation that the party applying for the permit possesses the requisite property rights to undertake the activity applied for (including compliance with special conditions, mitigation, etc.).

Contact Information

For projects located in central and southern Indiana:

U.S. Army Corps of Engineers

Louisville District

P.O. Box 59 • Louisville, KY 40201-0059

502-315-6733

www.orl.usace.army.mil/

For projects located in northern Indiana:

U.S. Army Corps of Engineers

Detroit District

P.O. Box 1027 • Detroit, MI 48231-1027

313-226-2218

www.lre.usace.army.mil/functions/rf/dtwhome.html



Part II. *Indiana Department of* *Environmental Management*



Types of activities that require authorization

The Indiana Department of Environmental Management (IDEM) regulates projects that have a discharge to waters of the state (including wetlands), and that require a federal permit or license to authorize the project. For example, if you plan to dredge, excavate, or fill within lakes, rivers, streams, ditches, wetlands, or other waters, you need to obtain a federal permit from the Corps of Engineers prior to the commencement of work. Because the Corps of Engineers permit you seek would authorize a discharge to waters of the state, the Corps will require you to seek state authorization from IDEM as part of the permitting process (see flowchart at the beginning of this booklet). The regulatory program within IDEM is called Section 401 Water Quality Certification.

Some examples of activities regulated by the Section 401 program:

- Depositing fill or dredged material in waters of the state or adjacent wetlands.
- Site development fill for residential, commercial, or recreational developments.
- Construction of bridges, revetments, groins, breakwaters, levees, dams, dikes, and weirs.
- Placement of riprap and road fills.
- Widening, deepening, or construction of a pond or other related structure for the purpose of modifying a mapped floodway or for storm water detention/retention.
- Channelizing, widening, or otherwise altering the flow or path of a stream, ditch, or river.
- Mining sand, gravel, or peat (or other related mining activity) within any water body.

If you intend to conduct any of these types of projects, you should contact IDEM and/or the Corps of Engineers before starting work.

History and authority of IDEM

In 1984, Governor Robert Orr formed a study group to evaluate environmental issues in Indiana and to recommend solutions. One of the group's recommendations was to form a separate environmental agency to deal specifically with the regulation and protection of the environment. In 1985, the Indiana General Assembly passed a law to create IDEM, and Governor Orr signed the executive order on April 1, 1986. IDEM was empowered to implement various federal and state laws regarding the environment, including the Clean Water Act.

IDEM draws authority from two portions of federal and state law regarding the regulation of waters and water quality. First, IDEM is directly given the authority to implement the Section 401 Water Quality Certification Program by the federal Water Pollution Control Act (Clean Water Act or CWA). Section 401 of the CWA [33 U.S.C. 1341] establishes the Section 401 Water Quality Certification Program. Further, the Clean Water Act sets forth the basic requirements of the certification process, including:

- Requirement for public notice.
- Timeframe for review.
- Authority to attach conditions to certifications.

IDEM implements the Section 401 Water Quality Certification Program following these basic requirements. This program is set forth in the federal Clean Water Act in recognition of the fact that Indiana, like every state, has its own water quality standards, and those standards must be met in order for a federal permit to be granted. Congress set aside broad powers for states to implement this program.

Second, IDEM draws authority to regulate waters of the state (including wetlands) and implement this portion of the Clean Water Act from Title 13 of the Indiana Code. The relevant provisions of Title 13 include:

- Authority of IDEM to implement all aspects of the Clean Water Act.
- Definition of waters of the state.
- Authority for the Water Pollution Control Board to adopt rules to protect water quality.

- Requirement that IDEM implement those water quality rules.

In addition, Indiana's water quality standards are set forth at 327 Indiana Administrative Code (IAC) 2 and establish standards for physical, chemical, and biological properties for Indiana's waters.

Jurisdiction

IDEM regulates all waters in Indiana that meet the definition of "waters of the state":

IC 13-11-2-265

Sec. 265. (a) "Waters", for purposes of water pollution control laws and environmental management laws, means:

- 1. the accumulations of water, surface and underground, natural and artificial, public and private; or*
 - 2. a part of the accumulations of water; that are wholly or partially within, flow through, or border upon Indiana.*
- (b) The term "waters" does not include a private pond; or an off-stream pond, reservoir, or facility built for reduction or control of pollution or cooling of water before discharge; unless the discharge from the pond, reservoir, or facility causes or threatens to cause water pollution.*

Water bodies regulated by IDEM include lakes, rivers, streams, ditches, and wetlands. Any activity that would result in a discharge to any of these waters and requires a federal permit or license, regardless of the size, connection to other waters, or location of the water within Indiana, is regulated by IDEM under Section 401 of the CWA.

Permits

IDEM reviews projects and issues authorizations through the Section 401 Water Quality Certification (WQC). Under Indiana law, the terms and conditions of the WQC are enforceable by IDEM. All projects that require a WQC undergo the same review process. However, IDEM has "pre-approved" certain Corps of Engineers nationwide and regional general permits. This means that if your project complies with both the terms and conditions of the Corps of Engineers General Permit (see page 2) and the terms and conditions of IDEM's WQC for that general permit, no separate application to IDEM is required. You may be required to submit a notification form to be in full compliance with approved general permits.

How IDEM reviews your project

Public notice and comment are integral components of IDEM's WQC review. IDEM is required to public notice the receipt of all applications for WQC. IDEM drafts and publishes a public notice for all projects, except projects that qualify for a Corps of Engineers individual notice. In that case, the Corps of Engineers issues a joint public notice. IDEM public notice periods run for 21 days. Notice is served to adjacent property owners, other state and federal agencies, and any person who requests to be noticed of WQC applications. Any person may request that a public hearing be held to discuss the potential impacts of the project on water quality. Public hearings are held at IDEM's discretion.

Early Environmental Coordination

If you are planning a project which may impact waters of the state (such as wetlands) you should contact the Office of Water Quality to discuss the potential impacts of the project and what permits or authorizations may be required. You can submit a written request along with information such as plan overviews, environmental



assessments, and other maps and photos of the project site. You may request a response in writing, schedule a meeting in the office (which can include other agencies), meet in the field to inspect the site, or combine some or all of these options. Early coordination gives you the basic information you need to determine if you need certification. This process should be started six months to a year before you intend to begin work.

Most delays in the certification process are caused by applicants not providing all the information required for certification. Through the early coordination process, IDEM representatives can help ensure you know exactly what you need before you submit your application. Typically, you should be prepared to either submit or have available the following:

- copies of wetland delineations;
- plan overviews showing the accurate locations of buildings and other structures;
- location of dredged or excavated material disposal sites;
- plans which clearly show buffer zones and other protective measures; and
- wetland mitigation plans for projects which will involve the filling or excavation of wetlands.

In addition, if you are proposing work in or along streams and rivers, you may be required to submit copies of mussel surveys, sediment sampling tests, and plans which show areas of bank stabilization and tree clearing.

Application Review

IDEM follows a review process that is similar to that of the Corps of Engineers, which ensures consistency between the two agencies.

Upon receipt of an application, your project will be assigned to a project manager. IDEM project managers are divided by regions. Your project manager will be the single point of contact for project reviews (see regional map, page 11).

IDEM assesses the potential impacts of your project and its compliance with water quality standards by reviewing existing information and studies, and by consulting with other agencies and professionals. This review focuses on three basic questions:

1. Can adverse impacts to waters be avoided?
2. If impacts are unavoidable, what steps can be taken to minimize adverse impacts to waters?
3. If adverse impacts cannot be avoided or minimized, can impacts be mitigated to ensure no degradation of water quality?

IDEM will work closely with you on project design and analysis to ensure that all steps in the application process are met.

IDEM evaluates the potential impacts a project may have on the physical, chemical, and biological characteristics of the affected waters. This results in a determination as to whether a proposed project can or will comply with Indiana's water quality standards.

IDEM will require you to avoid impacts first and foremost, then minimize impacts to the greatest extent possible, and lastly, provide compensatory mitigation for adverse impacts to wetlands and other waters. IDEM will deny water quality certification if your proposed activity will cause adverse impacts to water quality, such as cases where the preceding steps are not followed or cases where compensatory mitigation cannot offset adverse impacts to water quality. You cannot proceed with a project without certification from IDEM.

How Long Will It Take to Process My Application?

By law, IDEM has up to one year from the date of the receipt of a completed application to render a decision. However, IDEM will attempt to have all decisions completed within 60 days of the date on which a complete application was received. No decision can be made until the 21-day public notice has expired and all comments have been addressed (if any were received).

Are There Fees?

Currently, there is no application fee for Section 401 Water Quality Certification.

Filling out the application form

IDEM has an official application form, *Application for Section 401 Water Quality Certification - State Form # 48598 (6-01)*, which must be used when applying for Section 401 Water Quality Certification.

The following instructions will guide you through the application form and will explain the information required in each section.

Block 1 - Applicant Information.

Provide your name, address, and telephone number. You **MUST** provide a contact name. For complex projects or projects with multiple contractors and responsible parties, designation of a single point of contact will speed up the review process and enable more timely responses to requests for information.

Block 2 - Agent Information.

If you choose to be represented by an agent, provide the agent's address and telephone information. You are not required to have an agent.

Block 3 - Project Location.

Provide specific information relating to the location of your proposed project. Provide accurate maps depicting the project location. Include the Universal Transverse Mercator (UTM) coordinates including the datum (e.g. 1927 North American). The UTM coordinates can be obtained from the United States Geological Survey 7.5-minute series topographic quadrangle maps. Try to keep detail on maps to a minimum, focusing instead on the location of structures and associated water bodies. You may include full size plans to supplement 8 1/2" by 11" map sheets.

Block 4 - Project Purpose and Description.

Provide the proposed or actual start date and the anticipated completion date. If you have started your project before obtaining a permit and WQC, you may be in violation of federal and state law. Give a narrative description of the proposed project. You should include any supplemental environmental reports, assessments, or other documents that explain or justify the proposed configuration of the project. You should describe possible alternatives to the proposed project that would avoid impacts to the aquatic resource. You should also describe ways to minimize impacts, including a description of how you plan to contain any dredged/excavated material to prevent re-entry into waterways or wetlands. If you can avoid impacts to the aquatic resource, you may be able to avoid the requirement to obtain a WQC. Alternatives may include: construction on the upland portions of the property; rerouting a roadway to avoid a wetland; or alternate design plans. Minimization of the impacts may decrease any mitigation requirements that might otherwise apply and increase the chances of receiving WQC. Minimization may include reduction of the amount of dredging, filling, or vegetative clearing. Describe the purpose of the project (that is, what goal or outcome will be met by the construction of the project).



IDEM file photo

Block 5 - Project Information.

Describe the type, composition, and quantity of fill material to be placed in the wetlands or other aquatic resources. When answering questions regarding project impacts on water resources, clearly state the units of measurement for all impacts. Summarization of impacts, associated mitigation, and references to drawings, maps, or other supporting documents in a table improves review times for applications. If one or more questions in the application form do not apply to your project, indicate this in the block with "NOT APPLICABLE." Use additional sheets to answer the questions if needed.

Block 6 - Drawing/Plan Requirements.

You must submit drawings/plans that are consistent with the listed specifications. Your project will be delayed if these materials are not submitted in the formats specified in the application.

Block 7 - Documentation Requirements.

All projects involving impacts to wetlands must have a wetland delineation approved by the Corps of Engineers in order for IDEM to determine the impacts to water quality associated with the project. DO NOT submit an application involving impacts to wetlands without a wetland delineation. Submittal of photographs depicting the project site is highly encouraged. Photos should be clearly labeled with the direction of the shot, the area depicted, and notes on relevant features. A map depicting the location of photos on the project site is also useful and should be included whenever photos are submitted.

Block 8 - Additional Information That May Be Required.

You are not required to submit the information specified in this section unless directed to do so by IDEM. However, you may submit the information if you anticipate that such information will be required. For example, if you are aware of issues on the proposed project site which may impact water resources, such as the presence of contaminated soils or sediments, endangered species, well field protection areas, or previously permitted activities on the project site, information regarding these points should be submitted with the certification application.

Block 9 - Permitting Requirements.

Provide information regarding your application to the Corps of Engineers. If you have not yet contacted the Corps of Engineers, you should do so as soon as possible. Review Part I of this booklet (page 1) for an overview of the Corps of Engineers' permitting process, and see the map on page 6 to determine the appropriate office to contact for more information. Provide information regarding any other federal, state, or local permits, variances, licenses, or certifications required for your project. Please indicate whether they were approved, denied, or are pending.

Block 10 - Adjoining Property Owners and Addresses.

List the names and addresses of landowners adjacent to the property on which your project is located. Adjacent property owners are persons who share property lines with your property. Inclusion of names and addresses of other persons (or entities) potentially affected by your project should include persons within your neighborhood, lake association, or in the general vicinity that may have an interest in your project. Consult with IDEM for further clarification.

Block 11 - Signature - Statement of Affirmation.

You must sign and date the application. If the applicant is a corporation, a responsible person from that corporation must sign. No other signatures will be accepted.

Contact information

IDEM - Office of Water Quality

Section 401 Water Quality Certification Program
P.O. Box 6015 • IGCN Room 1255
Indianapolis, IN 46206-6015
1-800-451-6027 or 317-233-8488
www.in.gov/idem/water/planbr/401/index.html

IDEM Regional Service Areas

Indianapolis Offices

Indiana Government Center North
100 N. Senate Ave. • Indianapolis, IN 46204
1-800-451-6027 or 317-232-8603 • Fax: 317-232-8406

Western Select Properties

2525 N. Shadeland Ave. • Indianapolis, IN 46219
Toll Free: 800-451-6027
Local: 317-308-3173 • Fax: 317-308-3339

Northern Regional Office

220 W. Colfax Ave., Ste 200 • South Bend, IN 46601-1634
Toll Free: 800-753-5519 • Local: 574-245-4870
Fax: 574-245-4877

Northwest Regional Office

NBD Bank Bldg. • 504 N. Broadway, Ste. 418
Gary, IN 46402-1942
Toll Free: 888-209-8892 • Local: 219-881-6712
Fax: 219-881-6745

Southwest Regional Office

208 N.W. Fourth St, Ste 201 • Evansville, IN 47708-1353
Toll Free: 888-672-8323 • Local: 812-436-2570
Fax: 812-436-2572



Part III. Indiana Department of Natural Resources



Types of activities that require authorization

The Indiana Department of Natural Resources (DNR) regulates various construction activities within, over, and/or under the state's waterways. State laws enacted by the Indiana General Assembly created these regulations in order to allow Hoosiers to utilize the state's water-related resources in a prudent manner, while minimizing flood-related damages and protecting Indiana's environmental and cultural resources.

Some examples of regulated activities:

1. Altering the level of the water or the shoreline of a public freshwater lake by excavating; filling in; or otherwise causing a change in the area or depth of; or affecting the natural resources, scenic beauty, or contour of; the lake below the waterline or shoreline. Activities include: dredging, new seawalls, seawall refacing, underwater beaches, boat wells, boat houses, and fish attractors.
2. All ditch and/or drain work that is both located within 1/2 mile of a ten (10) acre or more in size freshwater lake's shoreline and has a bottom depth below the lake's legal or average normal water level. Activities include: ditch construction and/or reconstruction; tile drain installation and/or repair; and the installation of pipelines having non-watertight joints.
3. Construction of any type within the floodway of any state waterway, such as bank protection, bridges, buildings, channel work, dams, excavations, fills, flood control projects, levees, outfalls, residential construction, and certain utility activity.
4. The placement, filling, or erection of a permanent structure in; water withdrawal from; or material extraction from a navigable waterway.
5. The taking of sand, gravel, stone, or other mineral or substance from or under the bed of a navigable waterway.
6. The construction of any channel that meets the following definition: an artificial channel; the improved channel of a natural watercourse; or a channel that connects to any river or stream in Indiana for the purpose of providing access by boat or otherwise to public or private industrial, commercial, housing, recreational, or other facilities.

History and authority of the DNR

In the 1930s and 1940s, Indiana was besieged with floods that took lives and damaged property. Interested in preventing such losses from happening again, in 1945, the Indiana General Assembly enacted the Flood Control Act. Created to prevent and limit floods, the act specifies that all floodways are to remain uninhabited and clear of any obstruction that would restrict their capacity to move floodwaters. The act also specifies that all flood control works and structures and the alteration of natural or present watercourses of all rivers and streams in Indiana are to be regulated. Originally, this regulatory authority was given to the Indiana Flood Control and Water Resources Commission. But in 1965, this commission and other state governmental entities were combined into the Department of Natural Resources (DNR). Within the DNR, the Division of Water was established and given regulatory authority over the Flood Control Act and other related regulations.

The following laws define the regulatory authorities and responsibilities of the DNR:

Lake Preservation Act, IC 14-26-2, authorizes the DNR to regulate Indiana's public freshwater lakes so that the recreational, natural resource, and scenic beauty values of these waters are preserved and protected.

Lowering of Ten Acre Lakes Act, IC 14-26-5, authorizes the DNR to regulate the lowering of a ten (10) acre or more in size freshwater lake's water level as the result of ditch and/or drain activity.

Flood Control Act, IC 14-28-1, authorizes the DNR to regulate activities within the floodway of any state waterway so as to best control and minimize the extent, height, and force of potential floods.

Navigable Waterways Act, IC 14-29-1, authorizes the DNR to regulate any activity within a navigable water that may: unreasonably impair the navigability of the waterway; cause significant harm to the environment; and pose an unreasonable hazard to life or property.

Sand and Gravel Permits Act, IC 14-29-3, authorizes the DNR to regulate the taking of sand, gravel, stone, or other mineral or substance from under the bed of a navigable waterway of Indiana.

Construction of Channels Act, IC 14-29-4, authorizes the DNR to regulate the construction of channels along the state's waterways to protect public health, safety, and welfare.

Jurisdiction

The DNR's limits of jurisdiction within waters depends on the activity and the type of water body in question.

The following list provides limits of jurisdiction for each of the laws the DNR implements.

For each of the following acts, the DNR has jurisdiction if/when the following conditions are met:

Lake Preservation Act: at or lakeward of a public freshwater lake's legal or average normal shoreline.

Lowering of Ten Acre Lakes Act: any ditch or drain within one-half mile of a ten (10) acre or more in size lake that has a bottom depth lower than the legal or average normal water level of a lake within one-half mile of the lake.

Flood Control Act: the area within the floodway produced by the regulatory flood. "Regulatory flood" means "a flood having a one percent (1%) probability of being equaled or exceeded in a year as calculated by a method and procedure that is approved by the Natural Resources Commission. The regulatory flood is equivalent to the base flood or the 100-year frequency flood." "Floodway" means "the channel of a river or stream and those portions of the flood plains adjoining the channel which are reasonably required to efficiently carry and discharge the peak flow of the regulatory flood of any river or stream."

Navigable Waterways Act: any water that meets the definition of "navigable." This term means "a waterway which has been declared to be "navigable" or a "public highway" by one or more of the following: a court, the Indiana General Assembly, the United States Army Corps of Engineers, the Federal Energy Regulatory Commission, a board of county commissioners, or the Natural Resources Commission."

Sand and Gravel Permits Act: the bed of any of Indiana's navigable waterways, which include rivers, streams, creeks, runs, canals, channels, ditches, lakes, reservoirs, or embayments.

Construction of Channels Act: any channel that meets the following definition: an artificial channel; the improved channel of a natural watercourse; or a channel that connects to any river or stream in Indiana for the purpose of providing access by boat or otherwise to public or private industrial, commercial, housing, recreational, or other facilities.

Permits

The DNR reviews projects and issues authorizations through the state statutes listed above. Projects that are regulated under more than one statute are issued separate permits with appropriate conditions from each statute. The Flood Control Act and Flood Plain Management Rule (312 IAC 10) and Lake Preservation Act and Lake

Construction Activities Rule (312 IAC 11) establish permit exemptions for a number of projects, either as a function of the watershed's physical parameters (by the project type) or through the establishment of jurisdictional limits.

Exemptions Through Jurisdictional Limits

Projects or portions of projects may not be subject to DNR regulation if:

- Portions of a project are outside of the floodway.
- A waterway's drainage area at the downstream end of the project site is less than 1 square mile (640 acres).

Primary Exemptions

A project is not subject to DNR regulation if it is:

- A reconstruction or maintenance project (as defined in the "County Drainage Code," IC 36-9-27) on an open stream or an open regulated drain, if the total length of the stream or drain is less than or equal to 10 miles. "Total length" means the length of the stream, expressed in miles, from the confluence of the stream with the receiving stream to the upstream or headward extremity of the stream, as indicated by the solid or dashed, blue or purple line depicting the stream on the most current edition of the seven and one-half (7-1/2) minute topographic quadrangle map published by the United States Geological Survey, measured along the meanders of the stream as depicted on the map.
- A state or county road bridge project where the drainage area at the bridge structure is less than 50 square miles and the project site is in a rural area. "Rural area" means an area where:
 - (1) the flood protection grade of each residential, commercial, or industrial building impacted by the project is higher than the regulatory flood elevation under the project condition; and
 - (2) the area lies outside:
 - (a.) the corporate boundaries of a consolidated city or an incorporated city or town; and
 - (b.) the territorial authority for comprehensive planning established under IC 36-7-4-205(b).



Other Exemptions

Contact the DNR to see if your project qualifies for any of the following project exemptions:

Floodways

- Utility line crossings and relocation projects.
- Removal of obstructions for river and stream maintenance.
- Residential additions and reconstructions.
- Wetland restoration projects.
- Qualified outfall projects.

Public freshwater lakes

- Temporary structures (i.e., piers, boat lifts).
- Dry hydrants.
- Reface of existing bulkhead seawall with glacial stone.
- Impoundments on the Tippecanoe River.
- Public water supply reservoirs.



IDEM photographer Andrew Pellosa

Early environmental coordination

Before beginning any large project, the DNR strongly encourages you to pursue an early coordination process with the agency. Pre-application consultation with the DNR can be used to clarify permit requirements, processing procedures, and verify the need for a permit application submittal.

You can obtain written comments concerning a project from the DNR Division of Water's Environmental Unit prior to submittal of the official application to DNR. These comments would be used on the subsequent permit application as long as the project has not been revised.

To begin the early coordination process, you must submit a written request to the Division of Water's Environmental Unit that includes the following:

1. Brief project proposal.
2. Project location on a U.S. Geological Survey quadrangle map.
3. Drawing of the area that will be disturbed.

SEA 368 Review Process

In addition to the above process, a formal, early coordination procedure for drainage board projects was established by the creation of Section 53.5 of the Indiana Drainage Code (IC 36-9-27) in 1995. Section 53.5 states that if a reconstruction or maintenance project is subject to regulation under the Flood Control Act or the Lowering of Ten Acre Lakes Act, or if it requires an Individual Permit under Section 404 of the federal Clean Water Act, the county surveyor or drainage board shall request an on-site field review of the project. The following process is detailed in the law:

1. The county surveyor or drainage board, through written notification to the DNR Division of Water, requests an on-site field review meeting.
2. Within 14 days, the Division contacts the surveyor (or the surveyor's designee) and IDEM to determine the date, time, and location of the meeting.
3. The on-site field review is conducted by one or more staff representatives from:
 - (a) the county,
 - (b) the DNR, including one engineer from the Division of Water,
 - (c) IDEM, and
 - (d) the local Soil and Water Conservation District, if applicable.
4. Within 30 days of the on-site field review, the Division of Water will provide the county with a summary of the review. The summary will include:
 - (a) a narrative and map defining the project location,
 - (b) a description of the proposed work,
 - (c) a list of conditions that DNR would place on a permit to mitigate any unreasonable or detrimental effects that may occur as a result of the proposed work,
 - (d) a list of conditions that IDEM would place on a certification to comply with Section 401 of the federal Clean Water Act, if it is possible to ensure compliance with Section 401 by placing conditions on the certification, and
 - (e) a list of any other conditions that the DNR and/or IDEM would place on a permit or certification for the proposed project.

How the DNR reviews your project

Each of the six statutes listed in the *History and Authority of the Indiana DNR* section (page 13) has specific criteria by which a project is judged to be acceptable or not. Conditions may also be added to an authorization in order to bring a project design up to the standards of the criteria noted in the statute. The primary conditions and criteria of each act are listed below.

Lake Preservation Act: Using the information you submit, the DNR determines your project's approvability by evaluating both its singular and cumulative impacts against the following criteria:

1. whether or not the project will adversely affect the natural resources and natural scenic beauty of the lake;
2. whether or not the project will adversely affect the water level of the lake; and
3. whether or not the project will compromise the public trust doctrine.

Lowering of Ten Acre Lakes Act: DNR evaluates a project's impact on "... land, water, lakes, fish, wildlife, and botanical resources that may be affected by the proposed work." This is accomplished by evaluating both the singular and cumulative impacts against the following criteria:

1. whether or not the project will endanger the lake level; and
2. whether or not the project will result in unreasonably detrimental effects upon fish, wildlife, or botanical resources.

Flood Control Act: The Flood Control Act places the burden of proving the project's approvability on the applicant. Using the information you submit, the DNR determines your project's approvability by evaluating both its singular and cumulative impacts against the criteria stipulated in the act:

1. whether or not the project will adversely affect the efficiency of, or unduly restrict the capacity of, the floodway;
2. whether or not the project will constitute an unreasonable hazard to the safety of life or property; and
3. whether or not the project will result in unreasonably detrimental effects upon fish, wildlife, or botanical resources.

Navigable Waterways Act: If a project that requires a permit under the Flood Control Act is also located within a navigable waterway, it does not require a separate permit under the Navigable Waterways Act, since the Navigable Waterways Act evaluation criteria are applied during the Flood Control Act project review. However, the following criteria must also be assessed:

1. whether or not the project will unreasonably impair the navigability of the waterway;
2. whether or not the project will cause significant harm to the environment; and
3. whether or not the project will pose an unreasonable hazard to life or property.

Sand and Gravel Permits Act: Projects which are subject to jurisdiction under this Act are also subject to jurisdiction under the Flood Control Act and the Navigable Waterways Act. To determine a project's approvability under the Sand and Gravel Permits Act, the DNR evaluates your project against the same criteria set forth under both the Flood Control and Navigable Waterways Act.

Construction of Channels Act: Prior to evaluating the approvability of your project, you must demonstrate to the DNR that you have:

1. obtained the written approval of IDEM for sewage disposal facilities involved with the channel and each facility that the channel is to serve, and
2. will dedicate any water created to general public use. Upon demonstrating you have satisfied these requirements, the approvability of your project will be evaluated against the following criteria:
 - a. whether or not the project will constitute an unreasonable hazard to life and property;
 - b. whether or not the project will result in undue effects upon the water levels of the river or stream or upon fish and wildlife resources; and
 - c. whether or not the project will adversely affect the public health, safety, and welfare.



General Public Notice

All permit applications submitted to the DNR must be placed on general public notice upon receipt by the agency. This is in addition to the notice you will have already given to property owners adjacent to the project site. You do not have to conduct this general public notice, it will be prepared and distributed by DNR staff. Unless an emergency has been declared by the Director of the DNR, the agency cannot act upon your application until 30 days after the date of the general public notice. At any time during the agency review process, a public hearing may be requested by the public if the provisions under 312 IAC 2-3 have been satisfied.

Inter-Department Consultation

For projects reviewed under the Lake Preservation Act, Flood Control Act and/or the Lowering of Ten Acre Lakes Act, DNR conducts a two-part, simultaneous review. One aspect of the review involves a technical assessment of the project's impacts on the efficiency or capacity of the floodway of a river or stream or on the water level or shoreline of a freshwater lake. Additionally, the hydraulic assessment of possible impacts on the floodway also takes into consideration the project's potential to create an unreasonable hazard to the safety of life or property upstream or downstream of the project site. This portion of the project review is performed by staff of the Division of Water.

The second aspect of the DNR's project review involves the proposed project's environmental impacts. This portion of the review is conducted by staff of several DNR divisions, and is coordinated by a staff member of the Division of Water's Environmental Unit. The divisions involved in the project review and their areas of expertise are given below:

- **Division of Soil Conservation** - reviews project plans to determine if proper soil conservation practices are being incorporated into the design to reduce sedimentation of waterways or adjoining properties.
- **Division of Outdoor Recreation** - reviews project sites to determine if recreational sites developed with Land and Water Conservation Fund grants will be impacted. The Outdoor Recreation Division also informs the Division of Water's Environmental Unit if the project will occur along one of Indiana's listed Scenic Waterways.
- **Division of Nature Preserves** - reviews project sites against the Natural Heritage Database for reports of endangered, threatened, or specially listed plant or animal species. This information is forwarded to the Division of Water's Environmental Unit.
- **Division of Forestry** - reviews project plans for impacts to Indiana's hardwood resources.
- **Division of Fish and Wildlife** - receives information noted above from other DNR divisions and conducts field inspections to determine whether or not the project will result in unreasonably detrimental effects upon fish, wildlife, or botanical resources.



DNR photographer Richard Fields

If the project will occur along a navigable waterway, two additional divisions of the DNR become involved in the project review. These divisions and their responsibilities are:

- **Division of Law Enforcement** - reviews project plans to determine impacts upon navigability and boater safety.
- **Division of Historic Preservation and Archaeology** - reviews project plans and site to determine if any known historical, architectural, or archaeological sites listed in or eligible for inclusion in the National Register of Historic Places will be impacted by the proposed project.

Final Processing

Once the environmental review has been completed, final comments are combined with the hydraulic review results and the final authorization documents are presented to the Director of the Division of Water for approval. If a public hearing through the DNR has been held, the transcript of this proceeding is included in the final documents presented to the Division of Water Director. Final approval documents will include specific and general permit conditions and information concerning appeal procedures.

Are There Fees?

With the exception of the permitting program within the Navigable Waterways Act, all of the regulatory programs administered by the DNR contain a non-refundable processing fee. These fees must be paid in full before the DNR can initiate its review of an application. If a project requires a permit under more than one regulatory program, the processing fee required by each program must be submitted. Following are the application processing fees for each DNR regulatory program.

Processing Fee

Code	Code Title	Fee
IC 14-26-2	Lake Preservation Act	\$25
IC 14-26-5	Lowering of Ten Acre Lakes Act	\$25
IC 14-28-1	Flood Control Act	\$50
IC 14-29-1	Navigable Waterways Act	No Fee
IC 14-29-3	Sand and Gravel Permits Act	\$50
IC 14-29-4	Construction of Channels Act	\$100

Each application submitted electronically through Access Indiana Information Network is subject to a \$15 network processing fee in addition to the statutory processing fee.

If a permit is issued under the provisions of the Sand and Gravel Permits Act, the statute requires the submission of two post-action fees: surety bond and royalties. The act requires that, as a condition of the permit, "the permittee shall give bond in the amount and with surety approved by the Department for full and prompt compliance with the terms and conditions of the permit." The Navigable Waterways Rule states that the bond must be in one of the following forms:

1. a surety bond (will not be accepted unless it is issued by a company holding an applicable certificate of authority from the Indiana Department of Insurance);
2. a cash bond; or
3. a certificate of deposit.

In addition to the surety bond, the Sand and Gravel Permits Act also requires that the DNR "... collect from the permittee ... the amount of the reasonable value of the mineral or substance taken, measured by weight, cubic dimensions, or other common and usual measurements." The rule states that the royalty value "... shall be as determined by the Department ..."

There are certain occasions when the material removed from or under the bed of a navigable waterway either has little commercial value or can be used for public benefit. Under these circumstances the rule allows the DNR to waive the royalty fee; however, the surety requirement remains in place.

How Long Will It Take to Process My Application?

There are no time limits for review of permits by the DNR. The Department strives to be efficient with reviews and thorough in its consideration of all information. Typically, Department actions are completed between 60 and 120 days from the date on which a complete application was received. No final actions can be taken until the statutorily mandated 30-day public notice has expired and comments from the reviewing divisions have been received.

Filling out the application form

The DNR has an official application form, *Joint Application Form - State Form 42946 (R2/3-98)*, which must be used when applying for any permit administered by the DNR. The DNR has a detailed application handbook that describes how to fill out the application, what to enclose with a given application, how to comply with public notice requirements, and other important information. Forms and a guide are available from the DNR at the following web address:

<http://www.in.gov/dnr/water/permits/index.html>

You may also obtain copies from the DNR Division of Water at the address listed at the end of this section. As an overview, any application submittal to the DNR must contain four primary pieces of information:

1. completed and signed application form with the correct application fee;
2. verification of public notice;
3. site location that includes the parameters of the project; and
4. complete project plans.

In general, all adjacent property owners to a project site must be notified of their right to review project plans and be notified of the DNR decisions regarding the project. Proof of notice to the adjacent property owners must be provided before the DNR can finalize its review of the proposed project.

A complete set of plans must also be submitted with every permit application. For most projects, the submitted plans should include a general project boundary map, scaled plan and profile sheets, and cross-section drawings. Typical cross-sections for specified reaches of the project may be submitted in lieu of detailed cross-sectional information throughout the project length. Although not required, a detailed project narrative and/or description will also aid in the processing of the application. Applications to the DNR are made through the Division of Water.

Contact information

Indiana Department of Natural Resources
Division of Water
402 West Washington Street • Room W264
Indianapolis, Indiana 46204-2748
Phone: 317-232-4160 • 877-928-3755 (toll free)
www.in.gov/dnr/water/

Section 3

Waterways Permit Coordination Workgroup

Final Report

Waterways Permit Coordination Work Group Final Report

April 2000 ~ 00-C04

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Att. 1: Obtaining a Permit to Dredge or to Place Dredged or Fill Materials Within Wetlands or Other Water Bodies	

Executive Summary

The Waterways Permit Coordination Work Group (Work Group) was formed in mid-1998 to fulfill a memorandum of understanding (MOU) between the Indiana Department of Environmental Management (IDEM) and the Indiana Department of Natural Resources (IDNR) to address coordination issues for waterways permits. Based on recommendations made by the Blue Ribbon Panel on Lake Michigan Issues (BRAP) and the Lake Michigan Marina Development Commission (LMMD), as well as specific concern regarding a few of large construction projects on Lake Michigan, the MOU directed the Work Group to do the following:

- Determine whether early coordination might be accomplished for a project to include the applicant and IDEM, IDNR, and the Army Corps of Engineers (US ACOE) (and as appropriate, the U.S. Fish and Wildlife Service, the Environmental Protection Agency, and the U.S. Coast Guard).
- Where not already available, establish a process for the applicant to request early permit coordination and negotiation to resolve any disagreements.
- Establish a measure of success of the joint permitting process, and whether the development of the joint permit application among IDEM, IDNR, and the US ACOE is feasible.
- Determine whether other methodologies, supportive of streamlining and protective of the environment, should also be pursued.
- Pursue the creation of a permit handbook of all permitting guidelines of IDEM, IDNR, and the US ACOE and the point of contact for various permits of each agency.
- IDEM and IDNR publish jointly a permit handbook or brochure to assist local communities in Indiana.

The Work Group met several times between June 1998 and March 2000 and made the following recommendations in response to the MOU. Recommendations address early coordination, the ombudsman function and general coordination, coordination of sediment testing parameters, public notice requirements, and a joint permit application.

Early Coordination

- Prepare a permit primer that addresses in a generalized manner questions about which permits might be needed for various types of projects. The primer should include selected information from Table 2.
- Augment the IDEM web-based permit guide (www.state.in.us/idem/guides/permit/index.html) to address early coordination. Create links to IDNR and US ACOE web resources.
- Create a targeted marketing and education program for potential permit applicants and development professionals. Provide regular educational opportunities to these stakeholder groups.
- Create permitting brochure that can be disseminated by field staff across agencies and programs.

Ombudsman/General Coordination

- Establish monthly meetings among relevant program staff within Indiana Department of Commerce (IDOC), IDNR, and IDEM to discuss current and anticipated projects of concern.
- Augment existing coordination/ombudsman functions within IDEM and IDOC through continued efforts to strengthen relationships among IDNR, IDEM, IDOC, US ACOE and other agencies as needed. Program staff should refer projects that could benefit from coordination to these offices.
- Prepare a listing of programs and program contacts that applicants can refer to, including a reference to the potential need for local permits. This list should be produced as a separate printed document as well as integrated into the web-based permit guide and the permit primer.
- Maintain and augment the IDEM web-based permit guide to address permit coordination issues generally. Create links to IDNR and US ACOE web resources.

- Convene program staff from IDOC, IDEM, and IDNR to review requirements and timelines within the Community Focus Fund program. The group should address creating a deadline for filing permit applications and strong guidance to applicant about the timing necessary to process permits and/or impact review.

Sediment Testing

- Create a sub-page within the web-based IDEM permit guide that addresses specifically dredging and includes links to the Great Lakes Dredged Material Testing and Evaluation Manual (<http://www.epa.gov/glnpo/sediment/gltem>).
- Address coordination of sediment testing parameters for individual projects through monthly coordination meetings.
- Suggest that applicants meet jointly, or by teleconference, with IDNR, IDEM, and US ACOE staff to develop a unified set of project-specific testing parameters.

Public Notice

- Prepare a matrix of public notice requirements for various environmental programs for use by potential permit applicants. Produce a printed document as well as a sub-page on the IDEM permit guide.
- Post IDEM public notices on the IDEM web site. IDNR notices currently are posted on the web.

Joint Permit Application

An independent group of representatives of IDEM, IDNR, and US ACOE was established to address a possible joint permit application. After significant deliberation, the U.S. Army Corps of Engineers chose not to participate in the development of a joint application form due to the projected increase in workload. IDEM and IDNR are continuing discussions independent of the Waterways Permit Coordination Work Group regarding a joint permit application.

Introduction

The Waterways Permit Coordination Work Group (Work Group) was formed in mid-1998 to address coordination issues for waterways permits. The Work Group met six times between June 1998 and March 2000. The remainder of this report documents the discussions and recommendations of the Work Group.

Impetus

The Waterways Permit Coordination Work Group is the outgrowth of several deliberative processes and specific concern regarding a few of large construction projects on Lake Michigan. In the early 1990s, Indiana considered participation in the National Oceanic and Atmospheric Administration's Coastal Zone Management Program (CZM) for Lake Michigan. As part of the state deliberation, the Indiana Department of Natural Resources formed four work groups that identified more than 800 coastal issues.

IDNR later formed the Blue Ribbon Advisory Panel on Lake Michigan Issues (BRAP) to continue the efforts of the CZM work groups. The group was composed of local elected officials and many of the interests who participated previously in the CZM discussions. On August 29, 1997, the BRAP adopted a resolution requesting that the Natural Resources Commission study permit coordination and provide recommendations to the governor.

The Lake Michigan Marina Development Commission (LMMDC), a state commission made up of the mayors of Whiting, Gary, Michigan City, Portage, Hammond, and East Chicago, previously considered a similar set of issues. The LMMDC passed a resolution calling for the creation of a work group to address these issues on December 27, 1996 (Appendix A).

In response to the recommendations of the BRAP and the LMMDC, the Indiana Department of Environmental Management (IDEM) and the IDNR adopted a Memorandum of Understanding (MOU) outlining a series of activities to address the concerns raised by the two bodies. The MOU was signed in May 1998 (Appendix B). The Waterways Permit Coordination Group was formed in response to the MOU. The MOU directed the Work Group to do the following:

- Determine whether early coordination might be accomplished for a project to include the applicant and IDEM, IDNR, and the Army Corps of Engineers (US ACOE) (and as appropriate, the U.S. Fish and Wildlife Service, the Environmental Protection Agency, and the U.S. Coast Guard).
- Where not already available, establish a process for the applicant to request early permit coordination and negotiation to resolve any disagreements.
- Establish a measure of success of the joint permitting process, and whether the development of the joint permit application among IDEM, IDNR, and the US ACOE is feasible.
- Determine whether other methodologies, supportive of streamlining and protective of the environment, should also be pursued.
- Pursue the creation of a Permit Handbook of all permitting guidelines of IDEM, IDNR, and the US ACOE and the point of contact for various permits of each agency.
- IDEM and IDNR publish jointly a permit handbook or brochure to assist local communities in Indiana.

Members

The Waterways Permit Coordination Work Group consists of eleven members representing the IDEM, IDNR, the Indiana Department of Commerce (IDOC) and the US ACOE, as well as environmental groups and citizens (Table 1). Richard Childers (IDEM), Steve West (IDEM), and Steve Davis (IDNR) provided expertise regarding dredging and sediment testing.

Table 1: Work Group Members

Member	Organization
Tom Anderson	Save the Dunes Council
Melanie Darke	Regulatory Ombudsman, Indiana Department of Commerce
Adriane Esparza	Northwest Regional Office, IDEM (previously represented the East Chicago Waterway Management District)
Mary Ellen Gray	Office of Water, IDEM
Denarie Kane	City of Hobart
John Konik	Detroit District, Army Corps of Engineers
Kathy Luther	Northwest Regional Office, IDEM (replaced by A. Esparza)
Bill Maudlin	Division of Fish and Wildlife, IDNR
Mike Neyer	Division of Water, IDNR
Dave Parry	Office of the Commissioner, IDEM
Andrew Pelloso	Office of Water, IDEM
J.B. Smith	Beckman, Kelly, & Smith

Process and Scope

The Waterways Permit Coordination Work Group began work in June 1998. In late 1998, the group decided to seek the assistance of an independent facilitator. The IDEM hired Jamie Palmer of the Center for Urban Policy and the Environment to facilitate.

In July 1999, the Work Group chose five topics to address, including:

- Impediments to early coordination
- Ombudsman function and general permit coordination
- Coordinating sediment testing parameters
- Coordinating public notice
- Joint permit application

While the impetus for forming the Work Group was a set of issues associated specifically with Lake Michigan, the Work Group agreed that recommendations would address regulatory processes as they affect waterways throughout the state. The Work Group identified the following permitting programs for primary consideration:

Federal Programs

- Section 10 of the Rivers and Harbors Act
- Section 404 of the Clean Water Act

State Programs

- Section 401 of the Clean Water Act, Water Quality Certifications
- Construction in a Floodway
- Navigable Waters
- Ditch Reconstruction
- Public Freshwater Lakes
- Mineral Extraction
- Access Channels

Between July 1999 and March 2000, the Work Group met six times (July 28, 1999, August 23, 1999, October 5, 1999, November 30, 1999, December 21, 1999, and March 22, 2000). Meeting minutes appear in Appendices C-H.

Impediments to Early Coordination

Discussion

Early coordination refers generally to coordination prior to the submittal of permit applications. Program staff provide advice to applicants regarding application preparation and conditions necessary for approval. A number of general and program-specific early coordination processes currently are available to permit applicants. Table 2 includes information regarding eight of these administrative mechanisms.

In addition to the impediments and limitations identified for specific programs, the Work Group identified several general impediments to effective early coordination, including, statutory complexity across programs, lack of comprehensiveness in coordination process, lack of exposure with potential applicants, focus of agency resources on processing permit applications, and limited staffing levels. The specific nature of projects also creates impediments to effective coordination. Projects may be complex, making coordination of the various elements more difficult. In other cases, prospective projects are not defined sufficiently to allow program staff to provide useful information and coordination.

Recommendations

Based on discussion among agency representatives and citizen members, the Work Group made the following recommendations to improve early coordination.

- Prepare a permit primer that addresses in a generalized manner questions about which permits might be needed for various types of projects. The primer should include selected information from Table 2.
- Augment the IDEM web-based permit guide (www.state.in.us/idem/guides/permit/index.html) to address early coordination. Create links to IDNR and US ACOE web resources.
- Create a targeted marketing and education program for potential permit applicants and development professionals. Provide regular educational opportunities to these stakeholder groups.
- Create permitting brochure that can be disseminated by field staff across agencies and programs.

Ombudsman and General Permit Coordination

Discussion

The IDEM and the IDOC currently have staff serving in the capacity of regulatory ombudsman. The IDOC office provides five basic activities, including educating incoming businesses regarding permitting processes, facilitating meetings among relevant agencies and departments for early coordination, facilitating resolution of permit issues for existing businesses, providing general information regarding regulatory issues, and participating in work groups that address regulatory issues. Within the IDEM, a permit coordinator exists within the Office of the Commissioner to coordinate agency response to projects with multi-media permit requirements. Table 2 in the previous section addresses more specific information about both of these positions.

Table 2: Early Coordination Programs

Program	Activities	Methods of Promotion and Contact	Typical Users	Impediments/Limitations
IDEM General	<ul style="list-style-type: none"> Generally a letter regarding relevant programs. Staff person within the Office of Water contacts other offices within the agency. 	<ul style="list-style-type: none"> Applicant contacts the Office of the Commissioner. Applicant contacts the Office of Water directly based on knowledge of the program. Process is listed on the IDEM web site. 	<ul style="list-style-type: none"> A variety of users. Most often, large projects that involve state or federal funding. Typically roadways and water and wastewater utility improvements. 	<ul style="list-style-type: none"> Limited specific information regarding a project limits the level of advice the agency can provide. Cumbersome process. Information provided is pro forma. Limited staffing. Limited communication regarding availability.
IDEM 401 Water Quality Certification	<ul style="list-style-type: none"> Provides written comments and refers the applicant to the Indiana Department of Natural Resources and the Army Corps of Engineers. Conducts site visits. 	<ul style="list-style-type: none"> Process is listed on the IDEM web site. Presentations at workshops and conferences for consulting engineers. The program is in the process of creating outreach materials. Referral from local agencies. General information gathering (agency staff become aware of potential projects through contacts with state and local agencies). 	<ul style="list-style-type: none"> Large projects. Three to four percent of annual applicants utilize process (15 to 20 applicants annually). 	<ul style="list-style-type: none"> Limited use (early coordination could benefit 20-30 percent of applicants). Unwillingness by applicant to expend additional resources for early coordination. Limited specific information regarding a project limits the level of advice the agency can provide. Limited staffing.
IDEM Permit Coordinator	<ul style="list-style-type: none"> Coordinates agency response across programs for a small number of multi-media projects requiring multiple permits. Maintains web-based permit guide for agency. 	<ul style="list-style-type: none"> Ad hoc. 	<ul style="list-style-type: none"> Large projects. 	<ul style="list-style-type: none"> Internal coordination is difficult. Requires vigilance.
IDNR General	<ul style="list-style-type: none"> Letter provides specific recommendations for IDNR programs. 	<ul style="list-style-type: none"> Process mentioned in the IDNR permit manual. Direct contact with program staff. 	<ul style="list-style-type: none"> Biggest users are surveyors, consultants, and other agencies. Less than 5% of applicants take advantage of this process. 	<ul style="list-style-type: none"> A lack of specific information regarding a project limits the level of advice the agency can provide. Limited use.
IDNR Division of Water Recommendations	<ul style="list-style-type: none"> Letter provides specific technical recommendations for flood insurance and regulatory programs and recommendation that applicant contact US ACOE, and other federal, state, and local regulatory agencies. 	<ul style="list-style-type: none"> Process mentioned in IDNR permit manual. Direct contact with program staff. 	<ul style="list-style-type: none"> Single parties to large corporations. 	<ul style="list-style-type: none"> A lack of specific information regarding a project limits the level of advice the agency can provide.

Table 2: Early Coordination Programs (continued)

Program	Activities	Methods of Promotion and Contact	Typical Users	Impediments/Limitations
SEA 368	<ul style="list-style-type: none"> ▪ IDNR and IDEM set conditions for local drainage projects. Conditions set are binding on IDNR. Conditions are non-binding on IDEM. 	<ul style="list-style-type: none"> ▪ Surveyor education materials including the Drainage Handbook. ▪ Requirements have been included in the county drainage code. 	<ul style="list-style-type: none"> ▪ County surveyors and drainage boards. 	<ul style="list-style-type: none"> ▪ Administratively difficult to get meetings set and responses completed within the statutory time limits. ▪ IDNR must set conditions without specific project plans. ▪ Limited staffing.
ACOE Ad Hoc	<ul style="list-style-type: none"> ▪ Provide advice upon request. 	<ul style="list-style-type: none"> ▪ Contact with program staff. 	<ul style="list-style-type: none"> ▪ Process is consultant driven. 	<ul style="list-style-type: none"> ▪ Limited staffing and other budgetary resources. ▪ Inconsistent in recommendation to contact with other relevant agencies.
IDOC Regulatory Ombudsman	<ul style="list-style-type: none"> ▪ Convenes relevant agencies for meeting with applicant. ▪ Follows up with regulatory staff when applicants experience problems. 	<ul style="list-style-type: none"> ▪ Contact with agency executive director. ▪ Contact with program staff. ▪ Direct phone contact (the office is in most phone books). 	<ul style="list-style-type: none"> ▪ Prospective, new and existing firms. ▪ Local governments (Community Focus Fund grants). 	<ul style="list-style-type: none"> ▪ Ad hoc process.
Multiple Agency Ad Hoc	<ul style="list-style-type: none"> ▪ Coordination meeting among various agencies. 	<ul style="list-style-type: none"> ▪ Contact with agency heads. ▪ Contacts with the Indiana Department of Commerce. 		<ul style="list-style-type: none"> ▪ Ad hoc process. ▪ Unwillingness by applicants to fund early coordination.

Table 3: Public Notice Requirements

Program	Issued	Content	Public Hearing
401 Water Quality Certifications (IDEM)	<ul style="list-style-type: none"> When US ACOE does not issue a public notice. Published upon receipt of an administratively complete application. 	<ul style="list-style-type: none"> Basic information identifying the applicant, the applicant's consultant, location of the project, effects on water bodies, a basic project description including a map, dates of the comment period, an indication that interested parties may request a public meeting, a description of the authority under which the notice is issued, limitations the agency has in considering public comments, contact for the agency project manager, an address for submitting comments, the US ACOE identification number (when available), and IDEM identification numbers that provide some basic information about the project. The standard comment period is 21 days. Can be extended for a variety of reasons, including the scheduling of a public meeting or receipt of significant supplemental information that affects the scope of the project (adds or deletes impacts). 	<ul style="list-style-type: none"> Discretionary. Can be requested by an individual. Provided if issues raised in request are germane to the program. Public meeting and formal public hearing formats utilized. Agency attempts to partner with other relevant departments within IDEM and outside agencies (IDNR, ACOE, etc.) when applicable to allow departments and agencies to brief the public about the different issues and needs associated with various environmental protection programs. The agency provides approximately 20 days notice prior to a public meeting. Most meetings are held in the evening.
IDNR permits (public notice and comment requirement)	<ul style="list-style-type: none"> Applies primarily to statutes addressing waterways permitting and wild animal permits. Applicant required to notify all adjacent landowners either by personal service, first class mail or certified mail; may publish a legal notice only if all of the first three methods fail. Notice is done typically prior to submittal of the application. IDNR notifies additional parties that request notice through a weekly mailing and listing on the agency web page. Both notices must run 30 days before a decision can be made. Typically, notice requirements require 45 to 60 days to complete. 	<ul style="list-style-type: none"> Basic information identifying the applicant, the applicant's agent, location and description of project, relevant statutes and rules, name of the affected waterway, the right to request and process for requesting a public hearing, and the right to request and process for requesting notice of agency action. 	<ul style="list-style-type: none"> Any party may request a public hearing at any time prior to issuance of a permit or a denial. Party must submit a petition with 25 signatures of parties over 18 within the county or a certain distance from the project. Department holds a hearing upon receipt of the petition (non-discretionary). Often issues raised at these public hearings do not relate to programs that IDNR administers. Public hearings are formal. Staff record comments.

Table 3: Public Notice Requirements (continued)

Program	Issued	Content	Public Hearing
ACOE Waterways Permits	<p>Notice for individual permits:</p> <ul style="list-style-type: none"> Notices are distributed to a mailing list. If the project falls within a single county, the notice is mailed to addresses within the project county and adjacent counties. Notices are automatically distributed to resource agencies (IDEM, IDNR, Fish and Wildlife Service, Environmental Protection Agency, etc.), environmental groups, local newspapers, and the applicable congressional office. Public comment period is typically 28 to 30 days. The period may be as short as 15 days on individual permits. Resource agencies are given an extra ten days to comment. <p>Notices also are issued for proposed regional general or nationwide permits and changes to regional general or nationwide permits.</p>	<ul style="list-style-type: none"> Notice describes the applicant, the project, under what authority the notice is issued, a statement about 401 water quality certification, an address for IDEM, a list of authorizations either requested or received by the applicant, information about the process for requesting a public hearing, public interest factors that will be used to evaluate a project (text from regulation), addresses Section 7 Endangered Species by providing known information and prompting the Fish and Wildlife Service to augment this information, a statement about historic properties and a prompt to the state historic preservation office to provide comments (similar to IDEM notice). Notices issued for proposed regional general or nationwide permits and changes to regional general or nationwide permits include much of the information above as well as addressing 401 water quality certification (application to IDEM). 	<ul style="list-style-type: none"> Requests for hearing must be in writing and list specific reasons for the hearing. Hearings are discretionary. Held only when hearing is likely to yield new information about the project.

Recommendations

Based on group discussion, the Work Group made the following recommendations to improve the ombudsman and permit coordination functions. The Community Focus Fund program provides grants to small communities for infrastructure improvements. This program is administered by IDOC.

- Establish monthly meetings among relevant program staff within IDOC, IDNR, and IDEM to discuss current and anticipated projects of concern.
- Augment the existing coordination/ombudsman functions within IDEM and IDOC through continued efforts to strengthen relationships among IDNR, IDEM, IDOC, US ACOE and other agencies as needed. Program staff should refer projects that could benefit from coordination to these offices.
- Prepare a listing of programs and program contacts that applicants can refer to, including a reference to the potential need for local permits. This list should be produced as a separate printed document as well as integrated into the web-based permit guide and the permit primer.
- Maintain and augment the IDEM web-based permit guide to address permit coordination issues generally. Create links to IDNR and US ACOE web resources.
- Convene program staff from IDOC, IDEM, and IDNR to review requirements and timelines within the Community Focus Fund program. The group should address creating a deadline for filing permit applications and strong guidance to applicant about the timing necessary to process permits and/or impact review.

Sediment Testing

Background

Sediment testing requirements have engendered frustration among permit applicants over time. Dredging projects require permits for dredging and the disposal of dredged material. Depending upon the circumstances associated with a project, the applicant may be subject to a number of sediment testing requirements across several regulatory programs.

Testing requirements vary by agency and program. IDEM focuses on the location and environmental impact of sediment disposal. US ACOE is concerned generally about whether projects affect overall navigation and the suitability of dredged material as beach nourishment. IDNR is focused on construction in the floodplain and potential effects on fish and wildlife. Around Lake Michigan, IDNR focuses on beach nourishment and shoreline dynamics. The Indiana State Board of Health (ISBH) also focuses on beach nourishment.

Some ad hoc coordination is occurring between the US ACOE Chicago District, IDEM, and IDNR for US ACOE projects. US ACOE contacts IDEM prior to testing to identify the parameters necessary to evaluate sediment for disposal. In addition, IDEM has been included in development and evaluation of the sample analysis plan, as well as having input regarding the quality and types of sampling done by US ACOE contractors. This process has not yet been applied to third party projects.

Work Group members agreed that the variation in project sites and circumstances makes it disadvantageous to create a set of universal testing parameters. Such a list would result in unnecessary and potentially costly testing for many projects.

Recommendations

The Work Group recommends the following action items.

- Create a sub-page within the web-based IDEM permit guide that addresses specifically dredging and includes links to the Great Lakes Dredged Material Testing and Evaluation Manual (<http://www.epa.gov/glnpo/sediment/gltem>).
- Address coordination of sediment testing parameters for individual projects through monthly coordination meetings.
- Suggest that applicants meet jointly, or by teleconference, with IDNR, IDEM, and US ACOE staff to develop a unified set of project-specific testing parameters.

Public Notice

Discussion

The Work Group discussed public notice requirements for three specific programs (a brief description is provided in Table 3):

- 401 Water Quality Certifications (IDEM)
- All IDNR permits (public notice and comment requirement)
- US ACOE Waterways Permits

The Work Group identified lack of coordinated project management by applicants and varied statutory requirements as the general impediments to coordinated public notice processes.

Recommendations

The Work Group made the recommendations listed below. Providing an integrated listing of IDEM public notices on the IDEM web site was identified as a long-term project.

- Prepare a matrix of public notice requirements for various environmental programs for use by potential permit applicants. Produce a printed document as well as a sub-page on the IDEM permit guide.
- Post IDEM public notices on the IDEM web site. IDNR notices currently are posted on the web.

Joint Permit Application

An independent group of representatives of IDEM, IDNR, and US ACOE was established to address a possible joint permit application. After significant deliberation, the U.S. Army Corps of Engineers chose not to participate in the development of a joint application form due to the projected increase in workload. The letter from the US ACOE declining participation appears in Appendix G (Attachment 8). IDEM and IDNR are continuing discussions independent of the Waterways Permit Coordination Work Group regarding a joint permit application.

Response to MOU

Table 4 summarizes the Work Group’s recommendations relative to the original charge established in the Memorandum of Understanding between IDEM and IDNR.

Table 4: Response to MOU

MOU Charge	Work Group Response
<ol style="list-style-type: none"> 1. Determine whether early coordination might be accomplished for a project to include the applicant and IDEM, IDNR, and the US ACOE (and as appropriate, the U.S. Fish and Wildlife Service, the Environmental Protection Agency, and the U.S. Coast Guard). 2. Where not already available, establish a process for the applicant to request early permit coordination and negotiation to resolve any disagreements. 	<p>The Work Group recommended the following actions to augment the current opportunities for early coordination within existing programs listed in Table 2:</p> <ul style="list-style-type: none"> ▪ Establish monthly meetings among relevant program staff within IDOC, IDNR, and IDEM to discuss current and anticipated projects of concern. ▪ Augment existing coordination/ombudsman functions within IDEM and IDOC through continued efforts to strengthen relevant relationships. Program staff should refer projects that could benefit from coordination to these offices. ▪ Augment education and marketing efforts to make potential applicants and development professionals aware of the coordination assistance available (permit primer, web-based permit guide, and brochure).
<ol style="list-style-type: none"> 3. Establish a measure of success of the joint permitting process, and whether the development of the joint permit application among IDEM, IDNR, and the US ACOE is feasible. 	<p>An independent group of representatives of IDEM, IDNR, and US ACOE was established to address a possible joint permit application. After significant deliberation, the U.S. Army Corps of Engineers chose not to participate in the development of a joint application form due to the projected increase in workload. IDEM and IDNR are continuing discussions regarding a joint permit application.</p>
<ol style="list-style-type: none"> 4. Determine whether other methodologies, supportive of streamlining and protective of the environment, should also be pursued. 	<p>The Work Group made the following recommendations regarding public notice requirements and the coordination of sediment testing parameters:</p> <p>Public Notice</p> <ul style="list-style-type: none"> ▪ Prepare a matrix of public notice requirements for various environmental programs for use by potential permit applicants. Produce a printed document as well as a sub-page on the IDEM permit guide. ▪ Post IDEM public notices on the IDEM web site. IDNR notices currently are posted on the web. <p>Sediment Testing</p> <ul style="list-style-type: none"> ▪ Create a sub-page within the web-based IDEM permit guide that addresses specifically dredging and includes links to the Great Lakes Dredged Material Testing and Evaluation Manual. ▪ Address coordination of sediment testing parameters for individual projects through the monthly coordination meetings. ▪ Suggest that applicants meet jointly, or by teleconference, with IDNR, IDEM, and US ACOE staff to develop a unified set of project-specific testing parameters.
<ol style="list-style-type: none"> 5. Pursue the creation of a permit handbook of all permitting guidelines of IDEM, IDNR, and the US ACOE and the point of contact for various permits of each agency. 6. IDEM and IDNR publish jointly a permit handbook or brochure to assist local communities in Indiana. 	<p>The Work Group recommends creation of a number of written and electronic materials to educate applicants about permit requirements:</p> <ul style="list-style-type: none"> ▪ Prepare a permit primer that addresses in a generalized manner questions about which permits might be needed for various types of projects. ▪ Maintain and augment the IDEM web-based permit guide to address permit coordination issues generally. Create links to IDNR and US ACOE web resources. ▪ Create permitting brochure that can be disseminated by field staff across agencies and programs. ▪ Prepare a listing of programs and program contacts that applicants can refer to, including a reference to the potential need for local permits. This list should be produced as a separate printed document as well as integrated into the web-based permit guide and the permit primer.

Implementation/Work Plan

The work group established the following responsibilities and timelines for implementation of its recommendations:

Table 5: Work Plan

Recommendation/Activity	Responsible Agency	Timeline
Prepare permit primer	IDEM/IDNR	6 months after approval by the Water Pollution Control Board (WPCB) and the Natural Resources Commission (NRC).
Augment the IDEM web-based permit guide to address early coordination. Create links to IDNR and US ACOE web resources.	IDEM	May 2000.
Create a targeted marketing and education program for potential permit applicants and development professionals. Provide regular educational opportunities to these stakeholder groups.	IDEM/IDNR	Products developed by end of 2000.
Create permitting brochure that can be disseminated by field staff across agencies and programs.	IDEM/IDNR	Simultaneous with the permit primer.
Establish monthly meetings among relevant program staff within IDOC, IDNR, and IDEM to discuss current and anticipated projects of concern.	IDNR will coordinate	Staff person has been assigned. Meetings will commence upon approval of the WPCB and the NRC.
Augment existing coordination/ombudsman functions within IDEM and IDOC through continued efforts to strengthen relevant relationships. Program staff should refer projects that could benefit from coordination to these offices.	IDEM/IDOC	Ongoing.
Prepare a listing of programs and program contacts that applicants can refer to, including a reference to the potential need for local permits. This list should be produced as a separate printed document as well as integrated into the web-based permit guide and the permit primer.	IDEM/IDNR	Simultaneous with permit primer.
Maintain and augment the IDEM web-based permit guide to address permit coordination issues generally. Create links to IDNR and US ACOE web resources.	IDEM	Ongoing.
Convene program staff from IDOC, IDEM, and IDNR to review requirements and timelines within the Community Focus Fund program.	IDOC	Completed in March 2000.
Create a sub-page within the web-based IDEM permit guide that addresses specifically dredging.	IDEM	May 2000.
Address coordination of sediment testing parameters for individual projects through the monthly coordination meetings proposed previously.	IDNR will serve to coordinate	Staff person has been assigned. Meetings will commence upon approval of the WPCB and the NRC.
Suggest that applicants meet jointly, or by teleconference, with IDNR, IDEM, and US ACOE staff to develop a unified set of project-specific testing parameters.	Relevant program staff	Ongoing.
Prepare a matrix of public notice requirements for various environmental programs for use by potential permit applicants. Produce a printed document as well as a sub-page on the IDEM permit guide.	IDEM	Will post matrix prepared from Work Group discussions upon adoption by the WPCB and NRC.
Post IDEM public notices on the IDEM web site. IDNR notices currently are posted on the web.	IDEM	Posted by the end of 2000. This activity will be addressed as part of a broad environmental justice initiative within IDEM.

Section 4

Joint application for waterway permits study report

Date: September 16, 1999
To: Joint Application Committee
From: Bill Kendall, Doug Shelton, Brett Crump, Andrea Gromeaux
RE: Joint Application Assignment

Executive Summary

As directed, the Joint Application Committee was charged with developing a joint application form along with a user-friendly instructional manual. In addition, the Committee was to evaluate the implications of a CORPS/IDNR/IDEM joint application and options of distributing and processing joint applications.

Our evaluation focused on solving the following two questions?

- 1) How can we design a joint application form that will make the permitting application and submittal easier for our customers while providing each agency with necessary information?
- 2) What is the best method of implementing a joint application that will speed up the review processing time for each agency?

The Committee findings are based on: a) a comparative analysis of all the applications reviewed by the three agencies in 1998. This comparative analysis is the most reliable data available within each agency for evaluating the options for distributing and processing a joint application; and, b) observations that exposed many differences of the three regulatory agencies.

Findings

- 1) A joint application form and instructional packet used as a common form would ease the burden of the customer when multiple authorizations are required; and, we believe will promote greater awareness of the other potentially required authorizations.
- 2) The Committee is in the process of designing a draft application form and instructional packet. The instructional packet will consist of individual sections that outline each agencies' jurisdictional authority, submittal requirements, and assistance information for clients needing more information.

- 3) Major differences have been exposed in the three agencies.
- regulatory authority
 - application and initial submittal requirements
 - project classifications
 - public notice and public hearing provisions
 - staff time varies by applicant type
 - review time
 - application fees
- 4) The committee conducted a comparative analysis of the 1998 application data of all three agencies to provide factual and statistical data to base decisions. The analysis yielded the following conclusions:
- 9% of the projects were reviewed by all three agencies and an additional 13% of the projects were reviewed both by Corps and DNR.
 - The increase in the number of reviews made by each agency if each agency reviewed every applications received by all three is as follows: (based on 1998 data)

	CORPS	IDNR	IDEM
# received in 1998	1132	1091	492
# increase if all reviewed	687	728	1327
% of reviews increase	61%	67%	270%

- 5) 270 of the DNR applications reviewed in 1998 were for seawalls on public freshwater lakes. These projects require authorization from all three agencies. However, the Corps processes many such projects as a Nationwide General Permit #13 for which IDEM has granted Water Quality Certification. Therefore, IDEM does not review many such projects. Establishing a Programmatic General Permit for seawall projects on public freshwater lakes in coordination with DNR and IDEM would reduce some of the CORPS workload and review overlap while reducing the customer burden. If most of these projects were reviewed by the DNR and Corps in 1998, then this proposal would result in a significant decrease (up to 60%) in the overlapping reviews between the two agencies.

6) Probable impacts in the use of a joint application form and instructional packet

Negative	Positive
1) increase in workload for each agency because uninformed applicants will have tendency to send to all three agencies	1) promote greater awareness of the other potentially required authorizations
2) increase processing time of all applications if staff's workload is increased	2) reduces the number of application forms for the customer when more than one permit is required
3) increase in unnecessary cost to the applicant to submit all the required documentation for all three permits when certain permits may not be needed	3) eases project coordination between the three agencies during review
4) each agency will receive unnecessary documentation that is required for the two other agencies	4) enhances public image of the three agencies

7) Probable impacts in the use of a "Dumb" Clearinghouse wherein all three agencies receive copies of all applications

Negative	Positive
1) increase in workload for each agency as indicated in Finding # 4	1) eliminates the customer's responsibility of determining what permits are required
2) increase processing time of all applications if staff's workload is increased	2) insures that all agencies are seeing all projects
3) increase in unnecessary cost and frustration to the applicant to submit all the required documentation for all three permits when certain permits may not be needed	
4) each agency will receive unnecessary documentation that is required for the two other agencies	

- 8) Probable impacts in the use of a "Smart" Clearinghouse wherein all three agencies only receive the applications for projects which are determined within their jurisdiction

Negative	Positive
1) privatization and delegation of a regulatory function is questionable	1) for IDNR, a completed jurisdictional review would be time saving for IDNR staff
2) liability issues in regards to jurisdictional errors	2) reduces the number of applications from those sent from "Dumb" Clearinghouse
3) increase in unnecessary cost to the applicant to submit all the required documentation for all three permits when certain permits may not be needed	3) eliminates the customer's responsibility of determining what permits are required
4) possible need for EPA to approve delegation of jurisdictional authority on Section 404 & Section	4) simultaneous submittals to all three agencies promotes a concurrent review period
5) difficulty in determining accurate wetland delineations	
6) questionable cost/benefit	

Products

Joint Application Form, see Exhibit A

The Committee considered several drafts of the joint application to insure:

- 1) easy use for our customers; and,
- 2) the informational needs of each agencies.

The simple, four page, joint application form is designed to request the necessary information that is common to all three agencies. Any information that is unique to a particular agency is identified within the instructional manual.

Instructional Manual, see Exhibit B

The instructional manual is being designed to include 1) each statute written in layman terms relative to the agency and their permitting authority; 2) examples of project descriptions, site location narrative, site drawings, project plans, cross sections, photo layout, etc.; 3) general outline of each agencies application process with estimated processing time per project type.

Supporting Data

Comparative Analysis Summary

Findings:

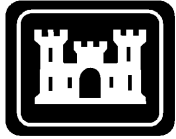
- 1) For this study 1,819 different projects were reviewed. These projects resulted in a total of 2,223 applications to the three agencies. Of the 1,819 projects, only 164 (9%) were reviewed by all three agencies; 240 (13%) were reviewed only by DNR and the Corps, 492 (27%) were reviewed by the Corps and IDEM, and 928 (51%) were reviewed by only one of the agencies.

Statistical influences:

- ✓ 283 (28%) applications in the total number (1,017) received by the Louisville Corps could not be matched because the information was incomplete; thus, was not included in the comparative percentages
- ✓ 7 (1.7%) applications in the total number (405) received by the Detroit Corps matches could not be matched because the information was incomplete; thus, was not included in the comparative percentages
- ✓ The number of applications that was considered in our calculations for the Corps is therefore based on the total of 1,132 (Detroit and Louisville)
- ✓ IDEM received a total of 492 applications (this total is a subset of the 1,132 of the Corps total because all IDEM projects also require authorization from Corps)
- ✓ DNR received a total of 1,091 applications
- ✓ The comparative data are based on applications that were received by each agency in 1998. Applications received by each agency in 1997 or 1999 that may be a duplicate to those reviewed in 1998 were not considered in the tabulations.
- ✓ The comparison is based on separating applications reviewed into counties and then matching applicant or agent names. It cannot be determined exactly whether the projects matched in this manner were identical projects. To do this type of matching, extensive and time consuming research would be required.

Section 5

**Mitigation banking public notice and
draft interagency agreement**



**US Army Corps
of Engineers
Louisville District**

Public Notice

Public Notice No.

200200821

Date:

10 Jul 02

Closing Date:

9 Aug 02

Please address all comments and inquiries to:

U.S. Army Corps of Engineers, Louisville District

ATTN: Ms. Amy S. Babey, CELRL-OP-FN

P.O. Box 59

Louisville, Kentucky 40201-0059

Phone: (502) 315-6691

The Louisville District, U.S. Army Corps of Engineers (Corps), the Detroit District, U.S. Army Corps of Engineers, (Corps), the Natural Resources Conservation Service (NRCS), the U.S. Environmental Protection Agency (USEPA), the U.S. Fish and Wildlife Service (USFWS), the Indiana Department of Environmental Management (IDEM) and the Indiana Department of Natural Resources (IDNR), hereinafter referred to as the Mitigation Banking Review Team (MBRT), pursuant to their statutory authorities and in recognition of the need to regulate the waters of the State and the waters of the United States, including wetlands, hereby agree to support the establishment of appropriate wetland mitigation banks in the State of Indiana. Further, the MBRT, including the signatories of this Interagency Coordination Agreement (ICA) or an authorized representative of the signatory, agrees that wetland mitigation banks have the potential to mitigate for unavoidable wetland impacts due to the excavating, filling, flooding or draining of waters of the State and waters of the United States as regulated under the laws of the State of Indiana, Section 404 of the Clean Water Act (CWA) and the wetland conservation provisions previously known as "swamp buster" of the Food Security Act of 1985, as amended (the 1985 Act).

This ICA includes the criteria for establishing, owning, operating and maintaining wetland mitigation banks. It further sets the criteria for authorizing applicants (e.g., individuals, corporations, units of government) to withdraw credits from a wetland mitigation bank to use as compensatory mitigation for unavoidable wetland impacts that would result from an applicant's proposed activity. It is intended that this ICA serve as the basis for the establishment, certification and withdrawal of credits from wetland mitigation banks. The appropriate Corps district (Louisville or Detroit) will be the lead agency in the review and approval of wetland mitigation bank projects within their geographic jurisdiction for the purpose of Section 404 of the Clean Water Act. The NRCS will be the lead agency for the establishment of wetland mitigation banks for the purpose of complying with the wetland conservation provisions of the 1985 Act. The lead federal agency shall be the repository of official documentation concerning this agreement as well as documentation concerning wetland mitigation banks resulting from this agreement.

The Corps of Engineers is soliciting comments from the public; Federal, State, and local agencies and officials; Indian tribes; and other interested parties in order to consider and evaluate this ICA. Any comments received will be considered by the Corps of Engineers to determine whether to approve or modify this agreement. Written statements received in this office on or before the closing date will become a part of the official record and will be considered in the determination on this permit request.

Information pertaining to this agreement, including copies on the ICA, is available from this office upon prior request. Additionally, the ICA can be found and downloaded from our web page at <http://www.lrl.usace.army.mil/orfpn/pn/indiana/notices.htm>. All comments regarding this proposal should be addressed to Ms. Amy S. Babey, CELRL-OP-FS at the address noted above and should refer to the Public Notice Number 200200821.

**INTERAGENCY COORDINATION AGREEMENT
ON
WETLAND MITIGATION BANKING
WITHIN THE STATE OF INDIANA**

MODIFIED: April 24, 2002

1 PURPOSE

The Louisville District, U.S. Army Corps of Engineers (Corps), the Detroit District, U.S. Army Corps of Engineers, (Corps), the Natural Resources Conservation Service (NRCS), the U.S. Environmental Protection Agency (USEPA), the U.S. Fish and Wildlife Service (USFWS), the Indiana Department of Environmental Management (IDEM) and the Indiana Department of Natural Resources (IDNR), hereinafter referred to as the Mitigation Banking Review Team (MBRT), pursuant to their statutory authorities and in recognition of the need to regulate the waters of the State and the waters of the United States, including wetlands, hereby agree to support the establishment of appropriate wetland mitigation banks in the State of Indiana. Further, the MBRT, including the signatories of this Interagency Coordination Agreement (ICA) or an authorized representative of the signatory, agrees that wetland mitigation banks have the potential to mitigate for unavoidable wetland impacts due to the excavating, filling, flooding or draining of waters of the State and waters of the United States as regulated under the laws of the State of Indiana, Section 404 of the Clean Water Act (CWA) and the wetland conservation provisions previously known as "swampbuster" of the Food Security Act of 1985, as amended (the 1985 Act).

This ICA includes the criteria for establishing, owning, operating and maintaining wetland mitigation banks. It further sets the criteria for authorizing applicants (e.g., individuals, corporations, units of government) to withdraw credits from a wetland mitigation bank to use as compensatory mitigation for unavoidable wetland impacts that would result from an applicant's proposed activity. It is intended that this ICA serve as the basis for the establishment, certification and withdrawal of credits from wetland mitigation banks. The appropriate Corps district (Louisville or Detroit) will be the lead agency in the review and approval of wetland mitigation bank projects within their geographic jurisdiction for the purpose of Section 404 of the Clean Water Act. The NRCS will be the lead agency for the establishment of wetland mitigation banks for the purpose of complying with the wetland conservation provisions of the 1985 Act. The lead federal agency shall be the repository of official documentation concerning this agreement as well as documentation concerning wetland mitigation banks resulting from this agreement.

2 GOALS

Wetland mitigation banks are a form of regional compensation that encourages the development of large-scale wetland complexes that can be managed and maintained in perpetuity for the benefit of the general public. The objective of a wetland mitigation bank is to provide for the replacement of the various functions and values of wetlands and other aquatic resources that are lost as a result of authorized impacts. The consolidation of multiple small mitigation projects may allow for better economic planning, implementation and maintenance. Additionally, the wetland mitigation banks may produce wetlands of greater value because of their location, size, high level of commitment to wetland functions, and the assured long-term management of the ecosystem. Further, this action may reduce administrative costs and delays in issuing permits for proposed activities that qualify for use of a wetland mitigation bank. The expected benefits include water quality management, fish and wildlife habitat restoration and creation, flood control, conservation of biological diversity, education, recreation, and aesthetics.

The establishment of wetland mitigation banks and the determination of a project's eligibility for use of a wetland mitigation bank shall be in compliance with all applicable federal and state regulations and guidelines, as listed in the Authorities section of this document.

The MBRT intends that wetland mitigation banks be a means of creating, restoring, enhancing and preserving wetlands and generating wetland mitigation bank credits in advance of destroying wetlands for specific projects. As an interim measure, and as a means of encouraging the initial development of wetland mitigation banks, the sale of credits may be allowed under conditions to be described later in this document.

3 DEFINITIONS

Applicant – the person, individual or entity seeking authorization from the Corps, IDEM or IDNR to impact a wetland and who seeks to purchase credits from the Bank to satisfy any compensatory mitigation requirements.

\bar{C} – mean Coefficient of Conservatism. With the exception of exotic species, each species inventoried has a Coefficient of Conservatism (C). The \bar{C} is calculated by adding all the coefficients together and dividing by the total number of species, including exotics (N): $\bar{C} = \sum C / N$.

Coefficient of Conservatism – A value between 0 and 10 which denotes a species' sensitivity to disturbance and specificity to a particular habitat. High values indicate plants that are found most often in natural, low disturbance remnants, while low values indicate plants that thrive in degraded habitats. For the purposes of this ICA the MBRT will use the methods and coefficients published by Taft et. al 1997¹.

Consensus -- The term consensus, as defined herein, is a process by which a group synthesizes its concerns and ideas to form a common collaborative agreement acceptable to all members. While the primary goal of consensus is to reach agreement on an issue by all parties, unanimity may not always be possible.

Compensatory mitigation--The restoration, creation, enhancement or preservation of wetlands or other aquatic habitats expressly for the purpose of compensating for unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Credit transfer agreement-- The written agreement between the applicant and the wetland mitigation bank in which the wetland mitigation bank agrees to sell or otherwise transfer mitigation credits to an applicant and the applicant agrees to buy or otherwise accept the mitigation credits. The credit transfer agreement (or other MBRT approved credit transfer Instrument) must specify the exact number of credits transferred specified in 100ths of a credit. Both parties must sign the agreement and submit the signed agreement to the MBRT and the permitting agency requiring the mitigation within 30 days of credit transfer (Attachment B).

Creation--The establishment of a functional wetland where one did not formerly exist.

Credit, Conditionally Certified--Unit of measure representing the portion of the wetland mitigation bank that has been constructed and is exhibiting functional qualities of a wetland after two years, but requires additional monitoring and management.

Credit, Fully Certified-- Units of measure representing the portion of the wetland mitigation bank that has been constructed and monitored for a period of time not less than five years and is considered to be functioning as wetlands without further intervention.

Credit, Precertified--Unit of measure representing the credits allowed for sale by the MBRT prior to construction.

Credit Release Letter -- Letter issued by the MBRT allowing a number of credits specified by the credit release schedule to be released for sale or transfer to applicants. No credit release letter shall be issued unless the lead federal agency and IDEM agree that the wetland mitigation bank has satisfied the requirements for credit release.

Credits Generated – The total number of credits the sponsor can sell including precertified credits, conditionally certified credits, and fully certified credits. In general this figure is equal to the total acreage of wetland

¹ Taft, John B., Gerould S. Wilhelm, Douglas M. Ladd, and Linda A. Masters. 1997. *Floristic Quality Assessment for Vegetation in Illinois, A Method for Assessing Vegetation Integrity*. *Erigenia*, Number 15. November 1997. pp.3-95

created or restored plus a portion of the wetland acreage enhanced or preserved. No direct credit will be given for upland preservation.

Credits Released-- The number of credits released by the MBRT for sale or transfer to applicants. Credits shall be released by the MBRT in accordance with the wetland mitigation bank Instrument's credit release schedule. The sponsor shall submit an application for credit release that demonstrates that the requirements for credit release have been met. If the MBRT finds the requirements have been met, the lead federal agency shall issue a credit release letter releasing the number of credits in accordance with the credit release schedule.

Credits Transferred-- The number of credits that have been sold or otherwise transferred to applicants. Credits may not be transferred unless they have been released through a credit release letter.

Debits-- The number of credits required by the permitting agency(s) to compensate for unavoidable wetland loss.

Department of the Army (DA) Permits--Authorizations for the excavation and discharge of dredged and/or fill material into the "waters of the United States", including wetlands, issued by the U.S. Army Corps of Engineers pursuant to Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899.

Enhancement--The improvement of functions and values of an existing wetland without altering its habitat type. Enhancement is assumed to provide less than 100% functional improvement compared to restoration or creation. The number of credits generated by enhancement may be less per acre than the number of credits generated by restoration or creation.

Growing Season—For the purposes of this agreement the growing season shall be the period indicated in the Soil Survey (NRCS) of the county the wetland mitigation bank is located in.

Hydroregime – The depth, frequency and duration of saturation, inundation and flooding in a wetland.

I – The mean coefficient of conservatism (\bar{C}) multiplied by the square root of the total number of species inventoried (N): $I = \bar{C}(\sqrt{N})$.

Jurisdictional waters – Waters of the State, waters of the United States, including wetlands, or both.

Land Manager -- The individual or entity who accepts responsibility for the management of the property after the wetland mitigation bank is successful and the MBRT has released the sponsor from monitoring.

Ledger--Document to be used in the accounting of credits and debits - The ledger will be maintained by the sponsor and periodically reviewed by the MBRT.

Long-Term Management Plan -- A plan for the future uses and management of the site. This plan must be approved by the MBRT before the final credit release. The land shall be managed in accordance with the long-term management plan. Long-term uses shall be consistent with the uses allowed in the conservation easement. These management activities shall be funded using the long-term management trust fund.

Long-Term Management Trust-- A trust fund established for the maintenance of the site into perpetuity. The sponsor is responsible for placing enough money into trust to generate, from interest, the annual management budget.

Management--Actions taken within the wetland mitigation bank wetlands, as stipulated by the MBRT or in the wetland mitigation bank Instrument, to establish and maintain desired habitat conditions. Representative management actions include water level manipulations, herbiciding, mechanical plant removal, and prescribed burning.

MBRT – The Mitigation Banking Review Team. The MBRT consists of either the Detroit District or the Louisville District, United States Army Corps of Engineers (Corps) and the Natural Resources Conservation Service (NRCS), the Indiana Department of Environmental Management (IDEM), the Indiana Department of Natural Resources (IDNR), the United States Environmental Protection Agency (USEPA), and the United States Fish and Wildlife Service (USFWS).

Mitigation Bank--The geographically and ecologically defined area for the creation, restoration, and enhancement of wetlands from which the applicant can purchase credits to provide required compensatory mitigation to offset unavoidable wetland impacts of their proposed project.

Mitigation Bank Instrument--A written document, which contains specifications pertaining to establishment, operation and maintenance of a wetland mitigation bank. It shall include codification of the goals, objectives, performance standards, and operating procedures of the wetland mitigation bank, and incorporate the relevant terms and conditions of this ICA. Principal types of wetland mitigation bank Instruments are a legally binding agreement between the sponsor and the MBRT or a DA Permit issued to the sponsor.

Monitoring--A specific program of data collection, by the sponsor, that documents the physical, chemical and biological characteristics of the wetland mitigation bank for the purpose of determining compliance with the performance standards set forth in the wetland mitigation bank Instrument.

N – Species richness or the total number of species encountered, including both native and adventive species (exotics).

Natural Area -- For the purpose of this ICA, a natural area shall mean any area in which the prevalent vegetation is native to Indiana and is either unmaintained or maintained for conservation. Mowed areas, impervious areas, graveled or riprap areas, and areas planted or dominated by non-native vegetation are not considered natural areas.

Permitting agencies – refers to each agency that has jurisdiction over a specific application to use the Bank as compensatory mitigation for impacts to a wetland. Permitting agencies may include the Corps, NRCS, IDEM or IDNR.

Prospectus--A preliminary plan for a wetland mitigation bank, prepared by a prospective sponsor, and submitted to the lead federal agency for consideration. The plan shall be reviewed and approved by all MBRT members.

Restoration – Re-establishment of wetland characteristics and functions at a site where they have ceased to exist.

Service Area– The area in which a wetland mitigation bank can reasonably be expected to provide appropriate compensation for impacts to wetlands and/or other aquatic resources. In Indiana this shall mean the area defined as the 8-digit hydrologic unit code as established by the U.S. Geological Survey for the State of Indiana (Attachment A) in which the wetland mitigation bank falls. The only exception to this shall be for the watershed delineated with the hydrologic unit code 05120201; this watershed is divided along a line that runs between the borders of the sub-watersheds 080, 050, and 110 (which lie within the northern portion of the 8-digit watershed code) and the sub-watersheds 020, 090, and 130 (which lie within the southern portion of the 8-digit watershed).

Site Development Plan--A plan for each wetland mitigation bank site that identifies all actions that will be undertaken to generate credits. Representative elements of the site development plan must include plans for site grading, revegetation, erosion control, water control structures, management and monitoring. This plan must be reviewed and approved by the MBRT.

Sponsor – Any public or private entity responsible for establishing and, in most circumstances, operating a wetland mitigation bank.

State permit – A construction in a floodway permit issued by IDNR, a National Pollutant Discharge Elimination System permit issued by IDEM, or any other state authorization regulating impacts to waters of the State other than a Water Quality Certification.

Success – Time at which the MBRT considers the site to meet or exceed all performance standards specified in the wetland mitigation bank's Instrument and this ICA.

Upland Buffer -- A contiguous strip of native upland vegetation with slopes no greater than 5%.

Upland Inclusions – Existing, high quality, upland areas preserved, restored and managed as a part of the wetland mitigation bank.

Waters of the State – Those areas subject to state regulatory authority as defined in IC 13-11-2-265.

Waters of the United States--Those areas subject to Corps regulatory authority pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

Water Quality Certification--Certification issued by the Indiana Department of Environmental Management (IDEM) in accordance with Section 401 of the Clean Water Act and state water quality standards.

Wetlands --Areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs or other similar areas.

4 AUTHORITIES

This agreement does not, in any manner, affect the statutory and regulatory authorities and responsibilities of the signatory parties. The establishment and use of wetland mitigation banks, as described in this document, shall be in accordance with all applicable statutes, regulations, and policies, including the following:

- Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (60 CFR part 228)
- Clean Water Act (33 U.S.C. 1251 et seq.);
- Rivers and Harbors Act of 1899 (33 U.S.C. 403);
- Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.) ;
- Endangered Species Act (16 U.S.C. 1531 et seq.);
- National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.)
- Interim Final Rule Highly Erodible Land and Wetland Conservation (7 CFR Part 12)
- Final Rule for Regulatory Programs of the Corps of Engineers (33 CFR Parts 320-330);
- Guidelines for Specifications of Disposal sites for Dredged and Fill Material (40 CFR Part 230) (Section 404 (b) (1) Guidelines) ;
- Memorandum of Agreement Between the U.S. Environmental Protection Agency and the Department of the Army Concerning Determination of Mitigation under the Clean Water Act, Section 404(b)(1) Guidelines, 1990;
- Water Pollution Control Laws (IC 13-18)
- Permits (IC 13-15)
- Indiana Flood Control Act (IC 14-28-1)
- Indiana Navigable Waterways Act (IC 14-29-1)
- Department of Environmental Management (IC 13-13)
- Powers and Duties of Department of Environmental Management and Boards (IC 13-14)
- Lakes Preservation Act (IC 14-26-2)
- Lowering of Ten Acre Lakes Act - "Ditch Act" (IC 14-26-5)
- Nongame and Endangered Species Conservation (IC 14-22-34)
- Indiana Water Quality Standards (327 IAC 2)
- NPDES regulations (327 IAC 5)

5 CONSIDERATIONS IN ESTABLISHMENT AND USE OF MITIGATION BANKS

The establishment of wetland mitigation banks within the State of Indiana shall be subject to consensus approval by the MBRT. As wetlands are created or restored, credits are established and these areas become “jurisdictional waters.” Applicants proposing to impact wetlands that currently demonstrate high quality functional characteristics will rarely be allowed to use a wetland mitigation bank to provide compensatory mitigation for the impact if the wetlands: have important hydrologic functions which, if altered, would have a significant adverse effect on the source, quality, or seasonal distribution of surface and/or groundwater supply of important habitats; provide important habitat for federal or state listed endangered or threatened species; provide important breeding, foraging, or resting areas for migratory birds or other wetland-dependent wildlife; have high quality natural communities indicating undisturbed natural conditions; or are a rare and unique resource in the state (e.g., fens, bogs, cypress swamps, dune/swales). A more detailed description of these high quality wetland communities may be obtained from the IDNR, Division of Nature Preserves.

If a DA Permit is needed in order to construct or restore wetlands on the wetland mitigation bank site, the Corps will follow normal procedures, which may include a full public interest review. If a permit is not needed to establish wetland mitigation bank credits, the lead federal agency will issue a Public Notice for a full public interest review.

5.1 GENERAL GUIDELINES FOR USAGE OF A BANK BY AN APPLICANT

Using permit review procedures set forth in Section 404 of the Clean Water Act and in 33 CFR parts 320 to 330, the lead federal agency will conduct project evaluations and will determine the level of mitigation required and whether the applicant is eligible to use a wetland mitigation bank. Additionally, IDEM and IDNR shall follow their normal review procedures and determine the level of mitigation required and whether the project is eligible to use a wetland mitigation bank for purposes of issuing Section 401 Water Quality Certification or other applicable state permits. It is the MBRT's goal to replace functions performed at the impact site; functions may include: fish and wildlife habitat, floodwater storage, water quality improvement, floral diversity, erosion control, aesthetic and recreational activities, etc. The following general guidelines will be used by the agencies in determining whether it is appropriate for an applicant to buy credits from a wetland mitigation bank in lieu of providing on-site compensatory mitigation:

- 1) It is intended that wetland mitigation banks be used primarily to mitigate wetland impacts associated with projects that, individually, affect relatively small acreage of moderate to low value wetlands. In most cases, these will be projects which, with mitigation, currently qualify for Corps General Permits.
- 2) In compliance with Section 404(b)(1) guidelines of the Clean Water Act, avoidance and minimization of impacts to wetlands must be reflected in the application for a permit or Water Quality Certification when an applicant proposes purchasing credits from a wetland mitigation bank.
- 3) On-site compensatory mitigation will be required over the use of purchasing wetland mitigation bank credits for projects where it is determined that replacing wetlands on-site is appropriate considering the landscape functions and probability of mitigation success; conversely, wetland mitigation banking may be appropriate where on-site mitigation would only produce low functional wetlands or the mitigation would be prone to failure.
- 4) It is the goal of the signatory agencies that project impacts be mitigated at wetland mitigation bank sites located within the same watershed or specified service area near the project site. For the purposes of this ICA, the service areas are defined using the attached 8-digit watershed code for the State of Indiana as delineated by the U.S. Geological Survey (Attachment A). In the event that project impacts are allowed to be mitigated outside the watershed/service area, higher credit ratios may be required.

5.2 WETLAND MITIGATION BANK ESTABLISHMENT SITE SELECTION CRITERIA

The following criteria shall be considered in evaluating and approving wetland mitigation bank sites and their development plans. Failure to meet any of these criteria may be, depending on circumstances, grounds for rejection of the wetland mitigation bank site. The site shall:

- 1) Be owned or under the full control of the sponsor;
- 2) Not contain prior recorded easements that the MBRT determines would adversely affect the maintenance of the wetland mitigation bank as a wetland in perpetuity.
- 3) Contain a majority of drained or hydrologically modified hydric soils, recognizing that restoration of former wetlands is a preferred form of mitigation;
- 4) Not include conversion of moderate or high quality uplands for the creation of wetlands;
- 5) Have no high quality wetlands or uplands that would be adversely affected by the construction or restoration work;
- 6) Following construction, be surrounded by at least a 50'-wide, upland buffer on all borders except where the mitigation site meets a water body, another wetland, or a natural area. Upland buffers must be vegetated with species native to that region of Indiana. Natural upland inclusions are also encouraged;
- 7) Be situated in a manner that adequate self-sustaining hydrology can be ensured;
- 8) Contain no known hazardous waste or solid waste, a survey of which, included as part of a Phase I assessment, must be conducted by qualified personnel (ASTM-1528).
- 9) Have adjacent land uses and zoning designations compatible with the goals of the wetland mitigation bank;

- 10) Following construction, support wetland-dependent species assemblages similar to those in natural areas in abundance, complexity and diversity including macroinvertebrates, reptiles, amphibians, mammals and bird species.
- 11) Following construction, support wetland plant communities similar to those in natural areas in cover, complexity and diversity.
- 12) Following construction, have all man-made grades steeper than 5% located outside of the buffer area, with the exception of impoundment structures. Other exceptions may apply if the sponsor can show that steeper slopes are indicative of the natural areas the wetland mitigation bank is designed to emulate (e.g., dune/swale, seep slope).
- 13) Include at least 25 acres of wetland restoration, creation, enhancement or a combination of the three.
- 14) In addition, the development of a wetland mitigation bank site shall not adversely affect Federally or State listed threatened or endangered species or their critical habitat areas.

Each wetland mitigation bank site shall be selected and managed to utilize the natural water storage functions of wetlands. Flood control and/or stormwater detention shall not be the purpose for constructing a wetland mitigation bank. The extent to which flood control/stormwater detention is provided by a wetland mitigation bank site should be determined on a case-by-case basis by the MBRT. The MBRT may allow routing of stormwater into the wetland mitigation bank if the water will not have a negative effect. The MBRT may require treatment of stormwater inputs.

For the purpose of this ICA, emphasis will be placed on the replacement of wetland acreage, type (in-kind replacement), and functions. Therefore, the preferred method of generating credits will be the restoration of former wetlands. Creation of new wetlands, which will result in a net gain of wetland acreage on the wetland mitigation bank site, may be considered. Wetland enhancement and preservation as a means of generating wetland mitigation bank credits will be considered on a case-by-case basis. The appropriate functions and values assessment methodologies and credit ratios will be determined for each site through consultation with the MBRT. The preservation of existing wetlands can be considered for mitigation credit in exceptional situations, such as cypress swamps, bogs, fens, and dune/swales. Also, the MBRT may give partial credit for preservation when preservation is not the sole source of credit generation and the sponsor has demonstrated that the preservation will augment the functions of the wetland mitigation bank as a whole.

5.3 BANK OWNERSHIP AND CONSERVATION EASEMENT

A wetland mitigation bank may be publicly or privately owned. The wetland mitigation bank may be incorporated as for-profit or not-for-profit. If the wetland mitigation bank is incorporated, it must be incorporated in the State of Indiana. Publicly owned refers to ownership by any municipal, county, regional, State or Federal governmental entity.

All land, including associated upland, which is part of the wetland mitigation bank shall be protected in perpetuity from future development by a permanent conservation easement. The conservation easement must set forth the long-term uses planned for the site. Following the review and approval of the conservation easement by the MBRT, the sponsor must record the easement with the appropriate county recorders office, attach it to the abstract of title, and provide a certified copy of the recording to IDEM and the lead federal agency prior to the MBRT authorizing any credit release. The easement will remain on file with the lead federal agency.

Transfer or sale of the wetland mitigation bank or conservation easement may occur to any party willing and financially capable of abiding by the terms and conditions of the wetland mitigation bank Instrument and this ICA. Any such transfer must first receive written approval from the MBRT.

5.4 INITIAL PLANNING AND PROSPECTUS DEVELOPMENT

The individual or entity proposing to sponsor the establishment of a wetland mitigation bank may choose to hold informal discussions with the MBRT. These discussions would serve to acquaint the sponsor with the legal, regulatory, and ecological background relevant to wetland mitigation banking and to provide procedural guidance. The prospective sponsor will be informed that a formal request, in the form of a prospectus, for the establishment of a wetland mitigation bank must be made to the lead federal agency. The prospectus must also include the DA permit application and state permit applications, if required. The purpose of the prospectus is to provide sufficient information to determine whether the general considerations and site evaluation criteria of the ICA are met. The prospectus will become the basis for the wetland mitigation bank instrument and must contain the following:

- 1) Bank location and size;
- 2) Title Search and legal description of the property;
- 3) A copy of all easements recorded on the wetland mitigation bank site;
- 4) A delineation of any waters of the State and waters of the United States including any wetlands that may exist within the proposed wetland mitigation bank site;
- 5) Type of wetland mitigation bank (i.e., whether single client, general use, market oriented, etc.);
- 6) Method of credit generation; (i.e., restoration, creation, enhancement or preservation);
- 7) Proposed credit release schedule;
- 8) Proposed performance standards;
- 9) Rationale for the types of wetlands chosen for development;
- 10) A statement concerning the wetland restoration viability at the proposed location; this must include a description of the surrounding land use and a review of local zoning, development, and transportation plans;
- 11) A general site plan showing the location of all existing and proposed wetlands (by wetland type), open water areas, waterways, inlets, outlets, upland habitats, roads, trails, structures, utilities, and any other existing and proposed site improvements (including future uses of the site);
- 12) A preliminary construction plan and schedule of completion. This shall include preliminary administrative, management, monitoring and financial plans. The sponsor's financial plan must demonstrate that the long-term management trust will guarantee the wetland mitigation bank's maintenance in perpetuity whether through continual ownership or by conveyance to a public or private agency that will assume the responsibility of the wetland mitigation bank;
- 13) A list of all adjacent property owners including complete name and address;
- 14) The name of the entity that will agree to issue the performance bond and/or irrevocable letter of credit; and
- 15) Articles of incorporation for the wetland mitigation bank, if appropriate.

5.4.1 APPLICATION

If a DA permit is required for the initial wetland mitigation bank development, the sponsor must submit a DA permit application and a prospectus to the appropriate Corps district and must apply for any necessary state permit or Water Quality Certification. If no permit is required, only a prospectus must be submitted to the appropriate Corps district. Upon receipt of an application and/or prospectus, the Corps will begin the public interest review including the issuance of a public notice soliciting comments on the application and/or prospectus from Federal, State and local agencies, the adjacent property owners and the general public.

The MBRT shall conduct site inspections of the proposed wetland mitigation bank. A letter of response to the prospectus indicating the wetland mitigation bank's feasibility will then be prepared by the lead federal agency with the MBRT's consensus, based upon observations made during the site visits, consultations and upon review of comments received from the public.

The formal request to the Corps for establishment of a wetland mitigation bank shall include:

- 1) A DA permit application to conduct any work within existing waters of the United States that is necessary to establish the wetland mitigation bank. If no DA permit is needed, no application need be submitted;
- 2) Application for Water Quality Certification or State Permit if one is required; and
- 3) A copy of the previously described prospectus.

6 DETAILED PLANNING STAGE

This is the final planning stage leading to the issuance of a permit or signatory approval from the MBRT. Each wetland mitigation bank must submit, to the MBRT for approval, a site development plan that identifies and incorporates to the maximum extent practicable:

- 1) Diverse aquatic and supporting landscapes (these may include, shallow open water, riparian wetlands, deep and shallow marshes, floodplain forest, wet meadows and prairies, and upland inclusions and buffers) which are interrelated so as to maximize wetland functions and values;
- 2) Diverse wildlife habitats;
- 3) Associated upland buffer areas contiguous to the wetlands to protect the wetlands from potential adverse effects of adjacent land use, specifying the width and area (acres) of all buffer zones;
- 4) Wetland functions which will be created or enhanced;
- 5) Plant species native to the area;
- 6) The type and source of soils;
- 7) The means for establishing the appropriate hydrology, including adequate storage for flood control, flow distribution, and water quality management;
- 8) Design, maintenance, and monitoring procedures that minimize energy needs, human intervention, cost, weed and pest control, including burnings. Monitoring procedures generally include vegetation transects, shallow groundwater monitoring arrays, delineations, mapping, etc.
- 9) A table of the wetland mitigation bank proposed acreage by wetland type, open water, upland habitat, roads, structures, etc.
- 10) Cross sections of the property showing at a minimum existing surface elevations, future surface elevations, existing seasonal high water table, future seasonal high water table, outlet control elevation, emergency outfall elevations, inlet elevations, berms, dams or other structures etc.
- 11) A map which shows areas by vegetation communities and planned hydroregime.

7 BANK OPERATION

7.1 GENERATING AND CERTIFYING CREDITS

Banking credit can be generated as follows:

- 1) Restoration: one acre of wetland restoration generates one wetland mitigation bank credit.
- 2) Creation: one acre of wetland creation generates one wetland mitigation bank credit.
- 3) Enhancement/Preservation: Partial credit (specified in a mitigation bank instrument) can be generated for permanent enhancement such as improving the hydrology of an existing degraded wetland site. Credit may be given when existing wetland and or other aquatic resources are preserved in conjunction with restoration, creation or enhancement activities and it is demonstrated that the preservation will augment the functions of the restored, created or enhanced aquatic resource. Such augmentation may be reflected in the total number of credits available from the wetland mitigation bank. Credits generated through wetland enhancement or preservation will be determined by the MBRT on a case-by-case basis.
- 4) The inclusion of upland and deepwater habitat within a wetland mitigation bank may be inadvertent (e.g., due to topographic position and real estate considerations) or planned to enhance certain wetland functions. No direct mitigation credit would be accorded for such areas unless beneficial effects can be clearly demonstrated. Note that the inclusion of upland areas may substantially increase diversity and may therefore significantly increase "I" values in the Floristic Quality Assessment.

7.1.1 MITIGATION BANK CREDITS- PERFORMANCE STANDARDS

Wetland mitigation bank credits shall be generated as wetlands are created, restored, enhanced or preserved on the wetland mitigation bank site. Credits shall be fully certified by the MBRT when the site conforms to the following performance standards:

- 1) Wetlands created or restored for credit shall meet the criteria outlined in the Corps of Engineers' Wetland Delineation Manual (Technical Report Y-87-1).
- 2) At least 80 percent of the planted/seeded species are alive and present following the fifth full growing season. The planting and seeding must conform to the approved construction plans.
- 3) The wetland plant communities must be free of the invasive non-native species purple loosestrife (*Lythrum salicaria*) and common reed (*Phragmites australis*).
- 4) All attempts should be made to eliminate all non-native invasive species, including reed canary grass (*Phalaris arundinacea*) and Eurasian water-milfoil (*Myriophyllum spicatum*), from all areas of the wetland mitigation bank including the preservation areas, upland buffers, and upland inclusions. The site shall be surveyed annually for non-native species presence. Presence of the above species may result in an extension of the monitoring period to monitor the effectiveness of the control measures and gauge the rate of infestation. The MBRT may allow the final release of credits if either the infestation is eliminated or sufficient funding is provided in the long-term management trust to control the non-native/nuisance species.
- 5) The total of native perennial species within each wetland plant community constitutes at least 50 percent cover within two (2) years after planting or seeding and 80 percent cover within five (5) years. Alternative standards for specific wetland habitats (e.g., the diversity of wetland species) may be developed on a case-by-case basis.
- 6) Additional performance standards will be specified in the wetland mitigation bank's Instrument based on the goals of that particular wetland mitigation bank.

If at the end of five (5) years of monitoring, any of the above standards are not met, the sponsor or the authorized agent of the wetland mitigation bank shall submit a plan to the lead federal agency which outlines all corrective measures to be taken based on the ecological conditions of the site. Management activities shall continue until all standards are met and verified by the MBRT. Any corrective measures proposed must be approved by the MBRT before the work is initiated by the sponsor.

7.2 MITIGATION BANK CREDIT RELEASE

Credits shall be released only through a letter of credit release. The letter of credit release shall be issued only after the MBRT has reviewed the wetland mitigation bank's application for credit release and concluded that the wetland mitigation bank has met the requirements for credit release as specified by the wetland mitigation bank's Instrument and this ICA. Credit release will commence as per a credit release schedule incorporated in the mitigation bank instrument. This schedule will be drafted on a case-by-case basis for the purpose of minimizing the risk associated with precertified credit sales. These schedules shall be flexible so as to encourage innovation while reducing risk of a net loss of wetland acreage or function but will be governed by the following guidelines:

- 1) Up to 30% of the wetland mitigation bank's available credits may be released after the following criteria have been met:
 - a) The escrow account, performance bond or irrevocable letter of credit has been secured by the sponsor and approved by the MBRT as described under the Financial Assurances section.
 - b) The conservation easement has been approved by the MBRT and recorded with the appropriate county recorder's office and a copy sent to the lead federal agency and IDEM.
 - c) The wetland mitigation bank Instrument has been signed by each member of the MBRT.
- 2) At least 50% of the credits generated may not be sold until the performance standards have been met unless provisions have been made for incremental release of credits based on the achievement of interim performance standards set forth in the Instrument.

7.3 MITIGATION BANK CREDIT SALES

7.3.1 FLORISTIC QUALITY THRESHOLD

The purpose of the Floristic Quality Threshold is to create an incentive for better quality mitigation by rewarding efforts based on performance, while allowing the sponsor flexibility. This is accomplished by comparing the floristic quality of the wetland mitigation bank to the floristic quality of the individual impact sites wanting to use the wetland mitigation bank. The Floristic Quality threshold is not meant to take the place of other tools used by the permitting agencies to determine if the wetland mitigation bank compensates for the functions lost through the permitted loss.

- 1) Precertified credits may be used as compensation for impacts to degraded wetlands ($\bar{C} \leq 2$, $I \leq 12$).
- 2) Conditionally certified and fully certified credits may be used as compensation for impacts which are the same floristic quality or lower floristic quality than the wetland mitigation bank itself. An impact site is qualified to use the wetland mitigation bank if the impact site's " \bar{C} " and " I " values are less than the wetland mitigation bank's threshold values described below.
 - a) The Bank's floristic quality shall be determined by using the Floristic Quality Assessment Method² over the course of the monitoring period (Exhibit G). All portions of the Bank, including uplands, shall be used in calculating the threshold.
 - b) The threshold shall be calculated by averaging the " \bar{C} " and " I " for the last two years of monitoring (i.e. if monitored for five years then the threshold shall be the average of year four and year five, if monitored for seven years then the threshold shall be the average of year six and year seven). All portions of the wetland mitigation bank, including any upland buffers or inclusions, shall be used in calculating this threshold.
 - c) The sponsors may choose to monitor for Floristic Quality outside the monitoring period in hopes of increasing their Floristic Quality Threshold.
 - d) The impact site's floristic quality shall be determined using an informal inventory method in which a competent botanist transects each macrophyte community planned for impact and records every plant species he or she encounters. The botanist is to continue until each additional unit of effort results in less than a ten percent increase in total species richness. The " \bar{C} " and " I " values for the impact wetland shall be calculated from this list.
 - e) The permitting agencies may, at their discretion, allow an applicant to use a wetland mitigation bank if the impact site's \bar{C} is no more than 0.5 point greater than that of the wetland mitigation bank, and the impact site's " I " value is no more than 5.0 points greater than that of the wetland mitigation bank.

7.3.2 SALE OF CREDITS

Upon authorization of the wetland mitigation bank through the issuance of a DA permit and/or interagency agreement, the sale of wetland credits and the creation or restoration of wetlands and buffers may commence. The Wetland mitigation bank credits may be sold for compensatory mitigation purposes in accordance with the following conditions:

- 1) The sponsor may sell credits as they are released by the MBRT. Credits may only be sold to applicants who have received authorization to use the wetland mitigation bank via the appropriate permits and/or certification. Both the sponsor and the applicant shall submit a signed credit transfer agreement (Attachment B) and all applicable regulatory Instruments requiring the mitigation and authorizing the use of the wetland mitigation bank (i.e., a signed 404 permit, 401 certification, NPDES permit, construction in the floodway permit) to the lead federal agency and the agency requiring the mitigation to document that the debiting action has been completed.
- 2) Certified credits may be sold at market value.

² Taft, John B., Gerould S. Wilhelm, Douglas M. Ladd, and Linda A. Masters. 1997. Floristic Quality Assessment for Vegetation in Illinois, A Method for Assessing Vegetation Integrity. *Erigenia*, Number 15. November 1997. pp.3-95.

- 3) The sponsor shall keep a ledger and provide the lead federal agency records that can be audited to ensure that credits transferred are used only once. All records must be available for any member of the MBRT to review.
- 4) Within two years of the first precertified credit sale, the sponsor must construct enough of the wetland mitigation bank to compensate for the total number of precertified credits allowed by the wetland mitigation bank's Instrument. The sponsor must complete physical construction of the entire wetland mitigation bank, including seeding and/or planting, within five years of the first credit sale. A more in-depth schedule shall be required in each Instrument. The MBRT may grant construction delays for legitimate reasons such as unfavorable weather conditions. Slow credit sales shall not be considered adequate reason for construction delays.

7.3.3 PURCHASE OF CREDITS

In accordance with the rules governing the sale of credits as previously described, credits may be acquired by applicants as compensatory mitigation to offset unavoidable wetland losses on the following basis:

- 1) In cases where wetland mitigation banking credits are based on created or restored wetlands and are being acquired within the same watershed/service area as the wetland mitigation bank site, the following criteria will serve as guidelines. However, actual mitigation ratios will be determined on a case-by-case basis:
 - a) If the wetland credits are fully certified by the MBRT, a minimum of one (1) credit shall be acquired for every acre of wetland compensatory mitigation required. Mitigation requirements may be split between credit purchases at the wetland mitigation bank and other mitigation alternatives as determined by the permitting agencies.
 - b) If the wetland credits are either precertified or conditionally certified, or are sought from outside the watershed/service area of the wetland mitigation bank, more credits will likely be required.
- 2) If credits are based on enhancement or preservation, the MBRT shall establish the number of credits generated by the wetland mitigation bank.
- 3) The appropriate permitting agency (i.e., Corps, IDEM, IDNR, etc.) may allow an applicant to mitigate at a lower mitigation ratio than normally required of conventional mitigation if the wetland mitigation bank has been constructed and has met all performance standards before the impacts occur. In no case shall this ratio be less than 1:1 (wetland mitigation bank credit: impact acres).

The sponsor shall keep a ledger of all credits generated, their certification status (i.e., precertified, conditionally certified, fully certified), permittee name, the applicable permit/certification numbers, the amount of the debit, and the type of credit if applicable (e.g., depression, forest, etc.). This ledger shall be made available to the MBRT through the lead federal agency anytime upon request. The sponsor shall notify the lead federal agency after each transaction. This notification shall include an updated copy of the bank ledger. The sponsor shall provide an annual summary to all members of the MBRT.

7.3.4 MITIGATION BANK SERVICE AREA

Credits from a wetland mitigation bank may be sold to mitigate for wetland impacts within the wetland mitigation bank's service area. The service area is the area in which the wetland mitigation bank can reasonably be expected to replace the uses of the wetland to be impacted and provide appropriate compensation for impacts to wetlands and/or other aquatic resources. The service area shall be the 8-digit watershed (as delineated by the U.S. Geological Survey) in which the wetland mitigation bank is located. The only exception to this shall be for the watershed delineated with the hydrologic unit code 05120201; this watershed is divided along a line that runs between the borders of sub-watersheds 080, 050, and 110 (which lie within the northern portion of the 8-digit watershed code) and the sub-watersheds 020, 090, and 130 (which lie within the southern portion of the 8-digit watershed). The appropriate permitting agency (e.g. IDEM, IDNR, Corps, etc.) may approve utilization of the wetland mitigation bank for impacts outside the service area to comply with that agency's compensatory mitigation requirements if greater ecological or water quality benefits can be derived from doing so.

8 FINANCIAL ASSURANCES AND MANAGEMENT

8.1 FINANCIAL ASSURANCES

The sponsor must provide both short-term and long-term financial assurances. In the short-term, the sponsor must guarantee completion of the wetland mitigation bank and payment of any liens or taxes on the property. For the long-term, the sponsor must establish a trust fund which will generate enough money to fund annual maintenance costs.

- 1) Short-term: The sponsor shall have deposited in an escrow account adequate funds to ensure the construction, monitoring, management and maintenance of the wetland mitigation bank. The escrow account must be maintained until all credits have been fully certified and the MBRT determines that the wetland mitigation bank is self-sustaining. As an alternative to the escrow funds, the wetland mitigation bank owner can provide a performance bond issued by a corporate surety and/or an irrevocable letter of credit issued by a financial institution for work to be performed. The corporate surety and/or the financial institution shall be approved by the MBRT prior to the issuance of a performance bond and/or irrevocable letter of credit. The dollar amount will be determined on a case-by-case basis depending upon the size and type of wetland mitigation bank proposed. The dollar amount of the bond and/or letter of credit will be reviewed and adjusted annually based on the results of the monitoring reports. Either IDEM or another agency approved by the MBRT must be listed as the beneficiary of the above Instruments. All types of financial assurances must include funds to cover any and all liens on the property in addition to other construction costs.
- 2) Long-term: The sponsor shall create and fund a long-term management trust fund that will generate annual returns sufficient for annual administration and maintenance of the site into perpetuity. As a part of the prospectus, the sponsor will submit an estimated yearly maintenance cost for perpetual maintenance. The MBRT will review and may modify this figure if necessary. After construction has been completed and until the wetland mitigation bank is released from monitoring, the sponsor shall submit an annual summary of management related expenses. The MBRT will review these figures and use them to adjust the amount of principal required in the trust fund. Before the final credit release, the sponsor shall submit a copy of the trust document and demonstrate that sufficient principal has been invested to generate enough net interest (accounting for tax, inflation, fees, etc.) to fund the annual maintenance and administration costs. The MBRT may require a percentage of each credit sale be reserved for this purpose or require a portion of the trust to be funded before each credit release. Any MBRT member may require an independent audit of the trust at any time to insure proper management of the property and the trust fund. This audit shall be conducted by a certified public accountant. Misuse of the trust fund may result in forfeiture of the trust, or criminal prosecution.

8.2 MONITORING, MANAGEMENT, AND REPORTING

Monitoring shall occur for a minimum of five (5) years from the date site construction and planting has been completed and shall continue until all performance standards have been met. The MBRT may require monitoring for a longer period where more time is needed to ensure a stable condition or when corrective action is taken. Management shall include all actions, as needed, to reconcile the wetland mitigation bank's current conditions with the performance standards established. The sponsor shall be responsible for monitoring, management and reporting to the lead federal agency. However, the work can be accomplished through subcontracting with public or private organizations.

The monitoring results and financial status of the wetland mitigation bank shall be provided to the lead federal agency on a yearly basis during the monitoring period. The lead federal agency will distribute this information to the MBRT members within 30 days of receipt. Mitigation monitoring reports may cease following the MBRT's determination that the performance standards have been met and has fully certified the remaining credits, but the notification of credit sale and annual summary of credit transactions as required above under "PURCHASE OF CREDITS" must continue until all credits have been sold. The sponsor may choose to continue monitoring and reporting past wetland mitigation bank success and full certification of credits in hopes of increasing the wetland

mitigation bank's Floristic Quality Threshold for any unsold credits. Any member of the MBRT shall retain the right to inspect the wetland mitigation bank site at any time. The lead federal agency shall provide the sponsor or applicant, upon request, copies of any reports. Joint field inspections by members of the MBRT shall be conducted on a regular basis. The MBRT will establish an annual monitoring schedule that assures that all wetland mitigation bank sites are inspected for compliance with their respective Instruments.

8.2.1 LONG-TERM MANAGEMENT

The wetland mitigation bank, once established, must be dedicated in perpetuity to maintaining the wetland functions and values to the exclusion of other conflicting uses. The land manager must submit a final long-term management plan to the MBRT. The MBRT must approve the plan before the wetland mitigation bank may be declared successful and final credit release allowed. This plan must include a list of proposed uses for the site. These uses must be compatible with the provisions of the conservation easement and approved by the MBRT. Land use must also be compatible with the wetland mitigation bank's goals and the benefits generated by the site. Uses, such as stormwater control, grazing, all terrain vehicle traffic, etc., which degrade the ecological value of the site, will not be considered compatible. The land manager, consistent with the long-term management plan, shall administer the trust fund specified in section 8.1.

9 CONTINGENCY PLANS AND REMEDIAL ACTIONS

In the event the MBRT determines that the Bank fails to meet the conditions of its Instrument, the lead federal agency shall notify the sponsor and shall specify a reasonable period of time in which to comply. In the event that modifications to the wetland mitigation bank are needed, the sponsor shall develop the necessary contingency plans within 60 days of notification and implement appropriate remedial actions for the Bank with the MBRT's approval. The sale of credits from the wetland mitigation bank shall be prohibited during the period of noncompliance. Continued nonperformance of the wetland mitigation bank shall result in revocation of the Instrument and forfeiture of financial securities to the beneficiary for implementation of the remedial action. Should any modifications to the Instrument be required, recommended changes shall be coordinated by the lead federal agency with the MBRT.

10 ICA MODIFICATION/TERMINATION

This ICA may be modified at any time by the joint agreement of the signatories. This ICA shall expire within five years of the date of the last signatory. A member of the MBRT may terminate its participation in this agreement upon 30 days written notice to all other members.

11 DECISION MAKING AND DISPUTE RESOLUTION

11.1 Dispute Between Members of the MBRT

Between Members of the MBRT: resolution of disputes about application of this banking instrument between the members of the MBRT shall be in accordance with those stated in the Federal Guidance for the Establishment, Use, and Operation of Mitigation Banks (60 FR 58605 *et. seq.*)

- 1) If a particular decision raises concern regarding the application of existing policy or procedures, an agency may request, through written notification, that the issue be reviewed by the Chair.
- 2) The notification will describe the issue in sufficient detail and provide recommendations for resolution.
- 3) Within 20 days, the Chair will consult with the notifying agency(ies) and will resolve the issue.

- 4) The resolution will be forwarded to the other MBRT agencies.
- 5) The Chair will have the responsibility for making final decisions regarding the terms and conditions of the banking instrument where consensus cannot otherwise be reached within a reasonable time frame (90 days from submittal of a complete prospectus)

11.2 Dispute Between the MBRT and the sponsor

Between the MBRT (Acting Through the Chair) and Sponsor: In the event of any disagreement or dispute between the Chair, acting on behalf of the MBRT, and the Sponsor regarding the interpretation and application of the bank's charter, the Chair and the Sponsor shall meet within 30 days of a written request therefor made by a party, and shall attempt to resolve such disagreement or dispute. In the event that the Chair and the Sponsor have not resolved the disagreement or dispute within 60 days of the date of the notice first requesting a meeting, then either party may elect to resolve the dispute or disagreement by the appropriate remedies then available under federal law.

12 SIGNATURES

The following parties agree to abide by the terms and conditions of this Banking Instrument:

JAMES TOWNSEND
Chief, Regulatory Branch
Operations Division
U.S. Army Corps of Engineers
Louisville District

DATE

GARY MANNESTO
Chief, Regulatory Branch
U.S. Army Corps of Engineers
Detroit District

DATE

JANE E. HARDISTY
State Conservationist
Indiana State Office
Natural Resources Conservation Service

DATE

KEVIN PIERARD
Chief, Watersheds and Non-Point
Source Programs Branch
U.S. Environmental Protection Agency
Region V

DATE

SCOTT PRUITT
Field Supervisor
Bloomington Field office
U.S. Fish and Wildlife Service

DATE

LORI F. KAPLAN
Commissioner
Indiana Department of Environmental Management

DATE

LARRY D. MACKLIN
Director
Indiana Department of Natural Resources

DATE

Section 6

MAPS OF WETLANDS IN INDIANA

Change in wetland area over time

Indiana wetlands and open waters graph

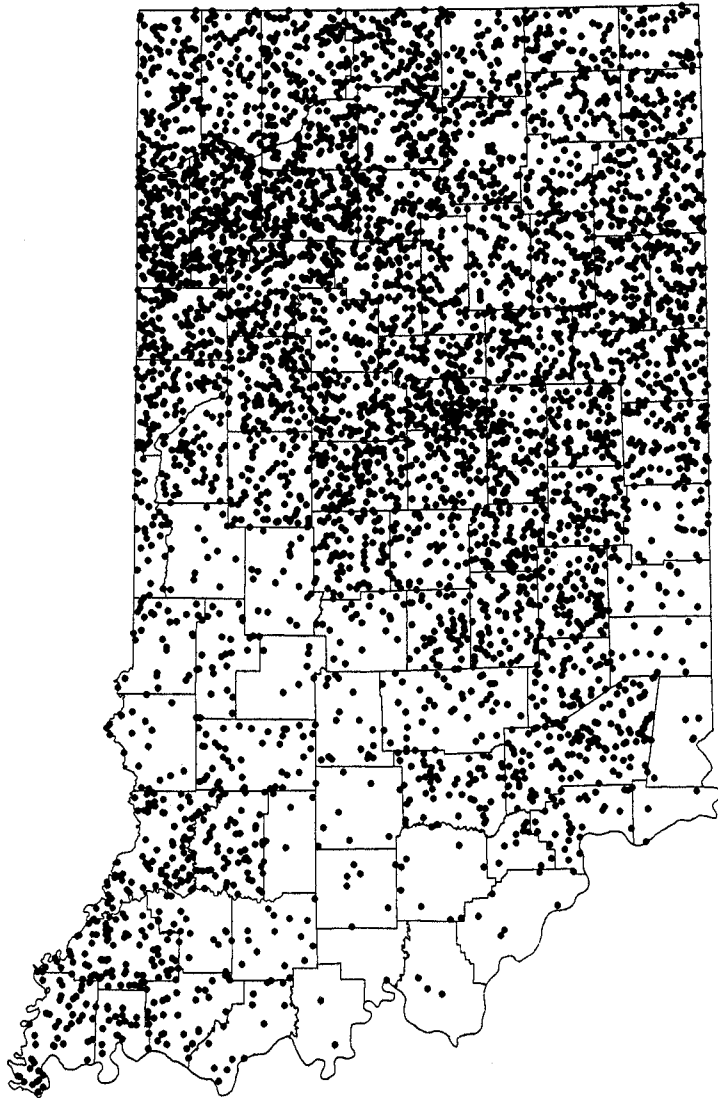
Wetlands less than 0.5 acres in size: Kosciusko County

Indiana wetland density maps

Wetland mitigation compliance summary

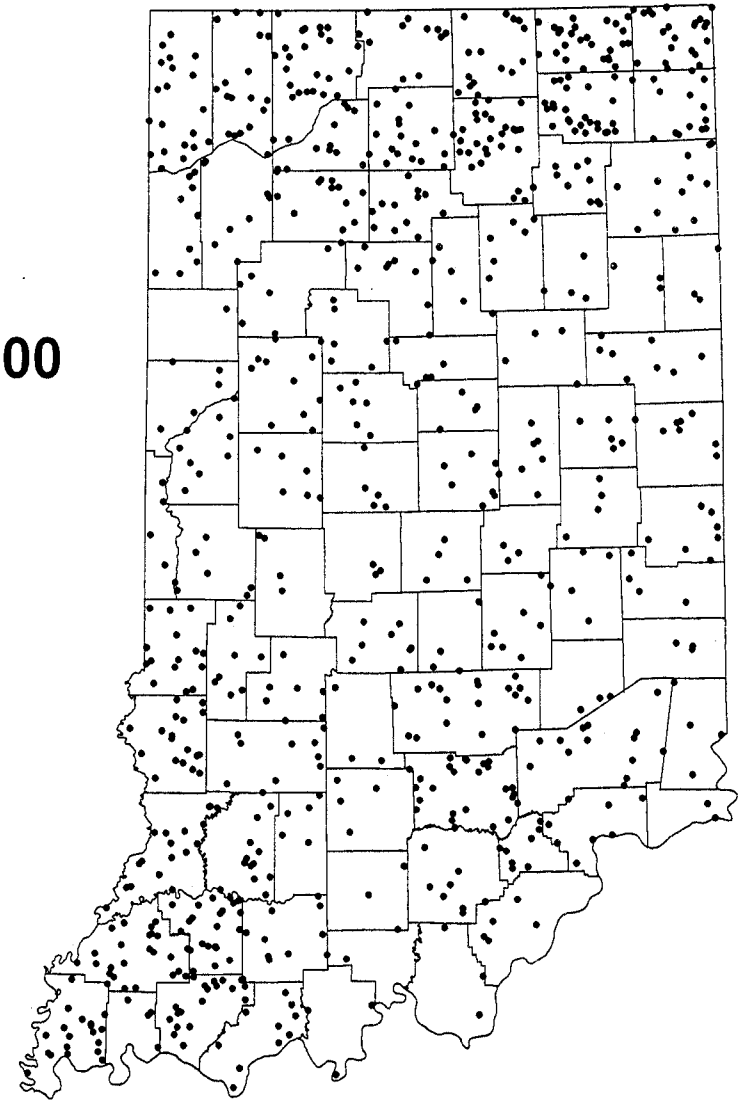
Change in Wetland Area Over Time

Historic

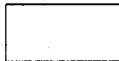


Source: Hydric soils acreage from
NRCS county soil surveys

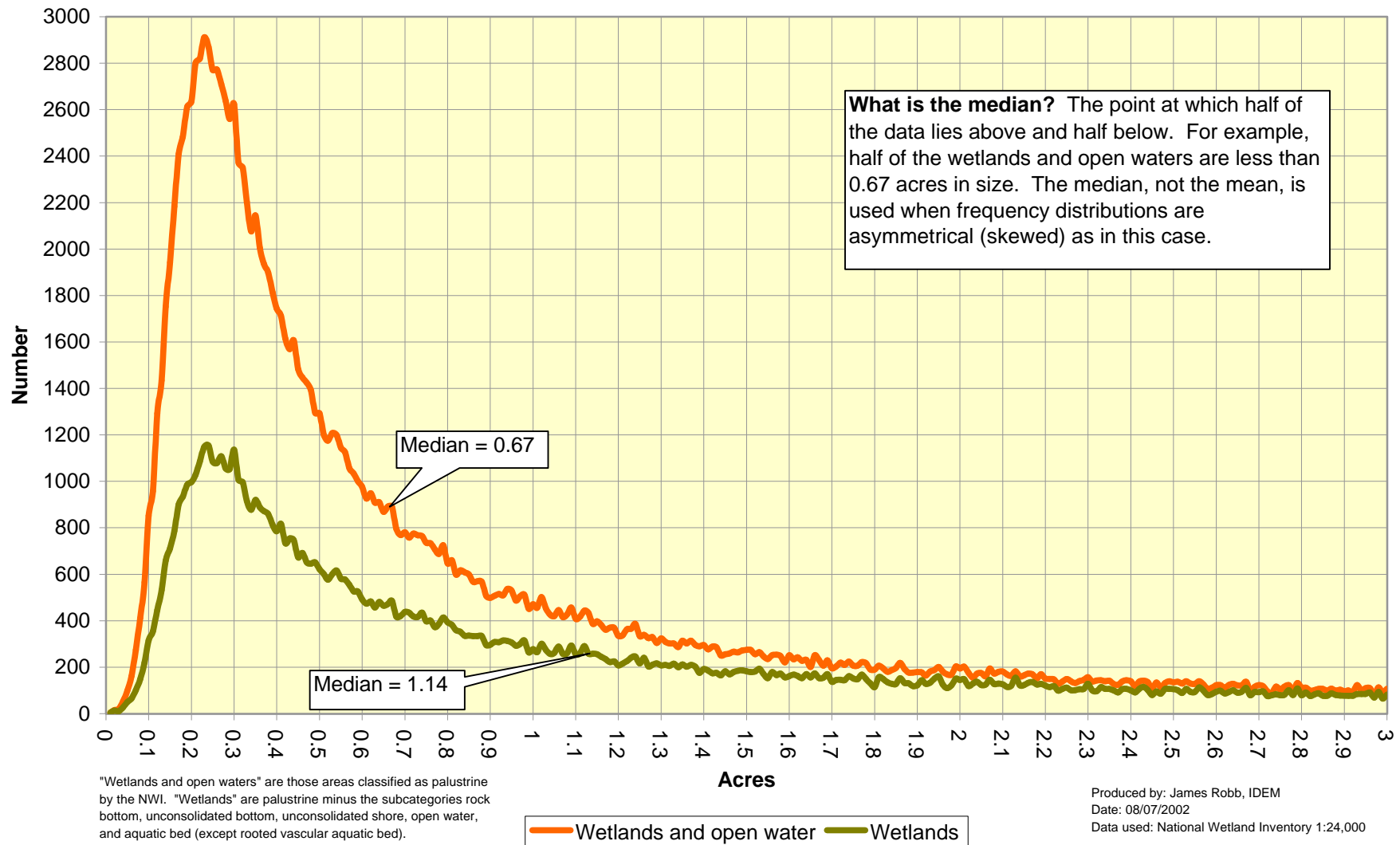
Circa 1986



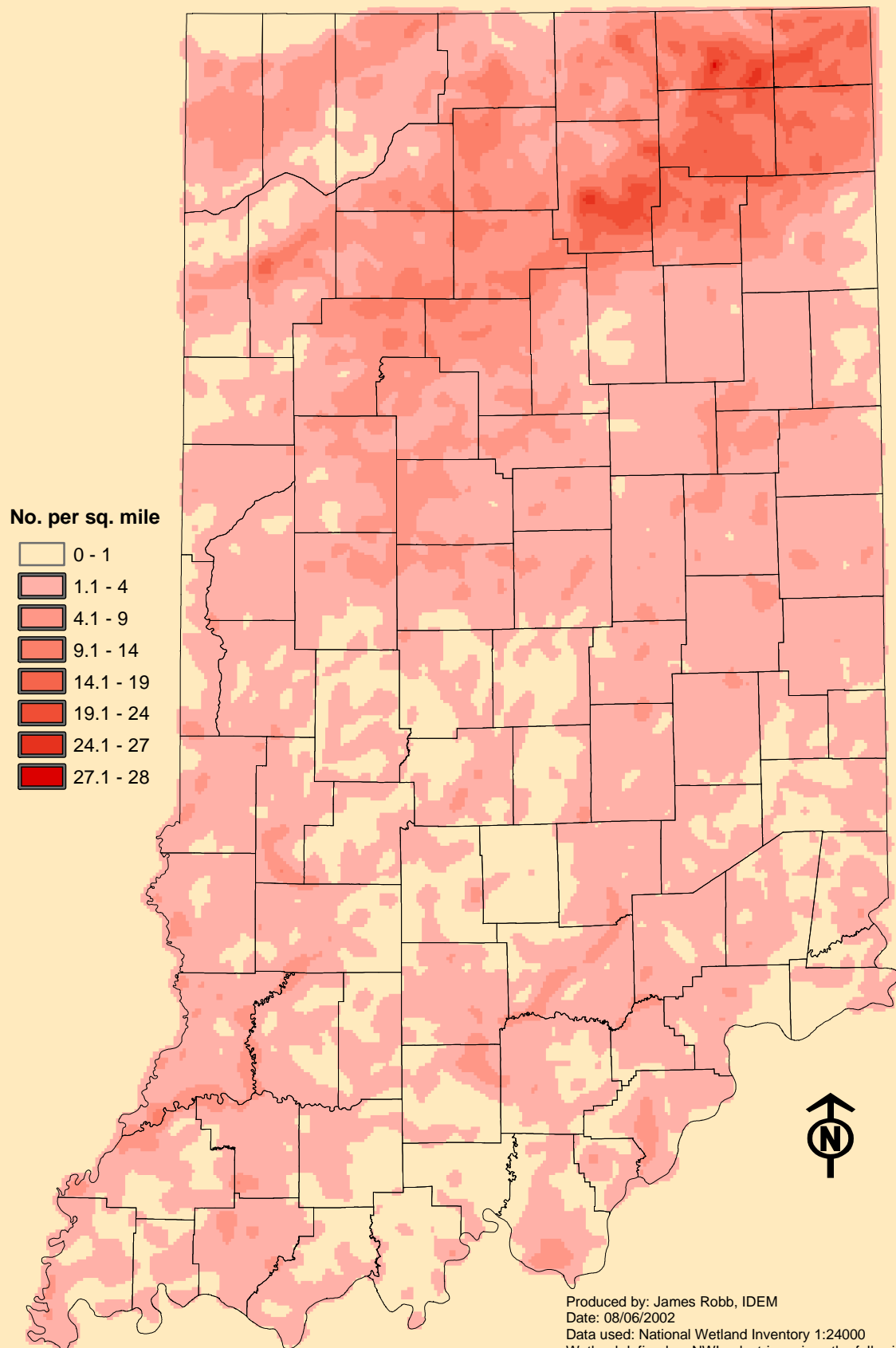
Source: Rolley, R.E. 1991. Indiana's
Wetland Inventory. Wildlife Management
and Research Note. No. 532. Indiana
Dept. of Natural Resources.

Wetland Acres
1 Dot = 1000
 **Counties**

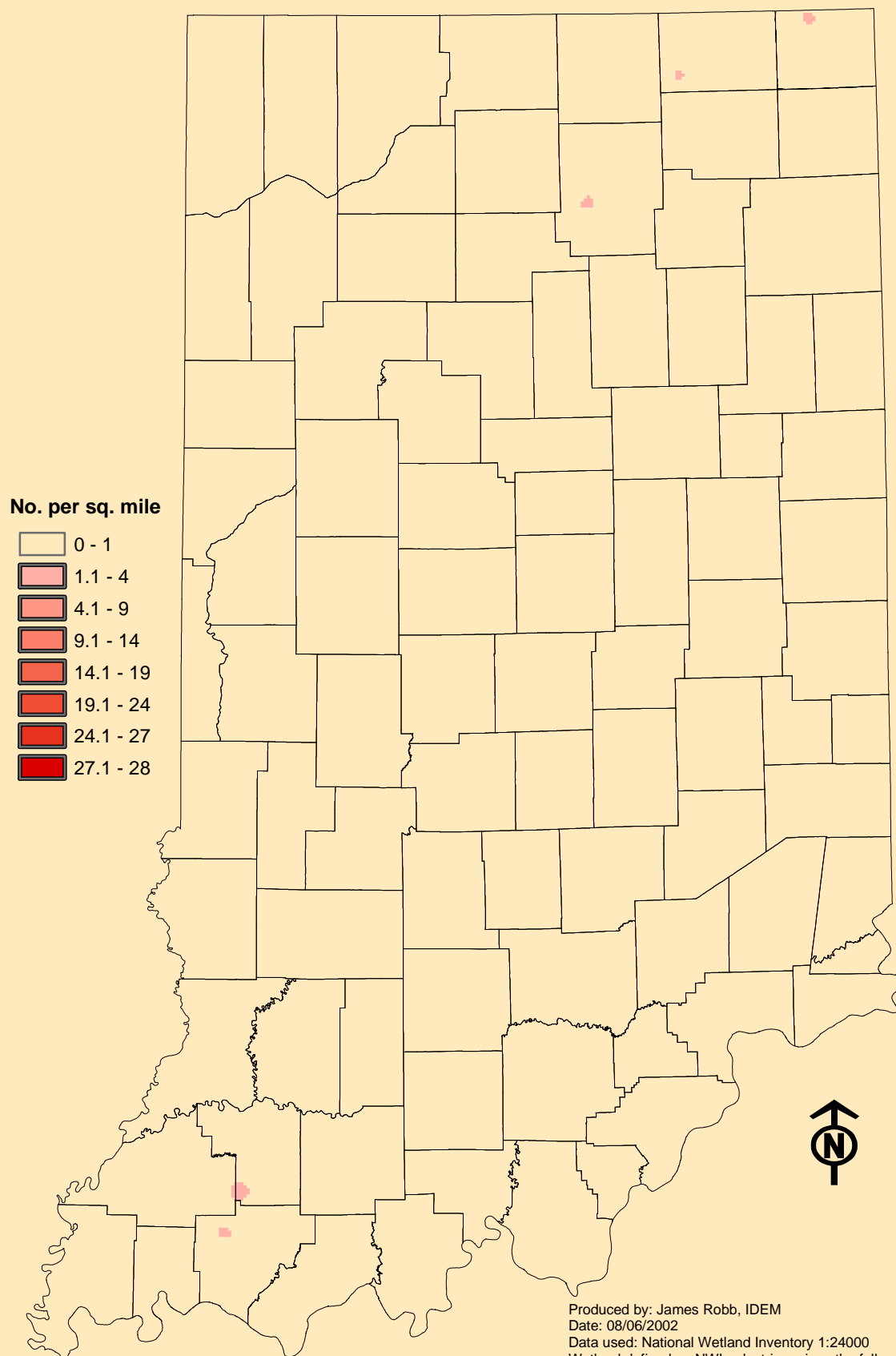
Indiana Wetlands and Open Waters by Size



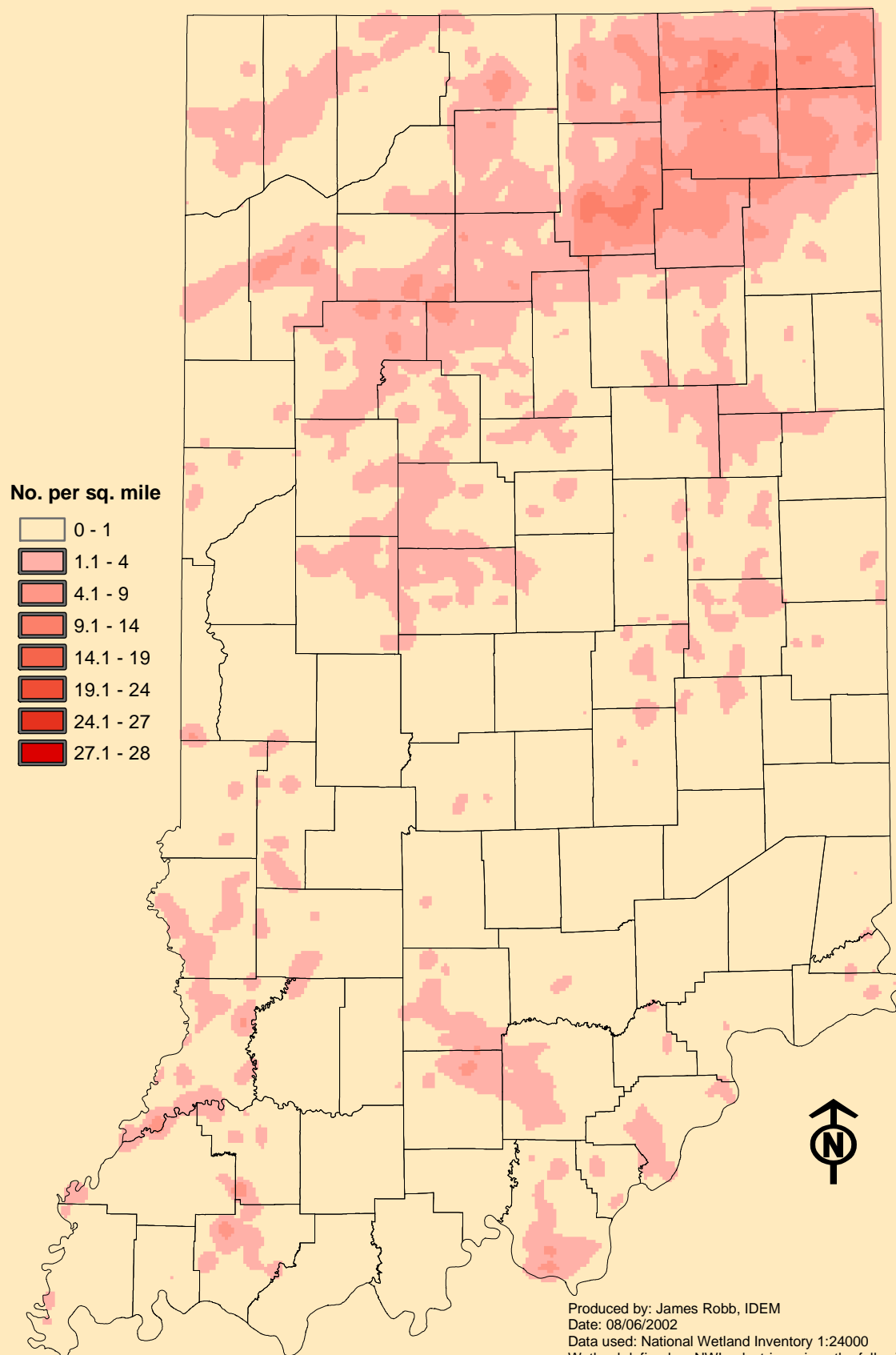
Indiana Wetland Density -- All Wetlands



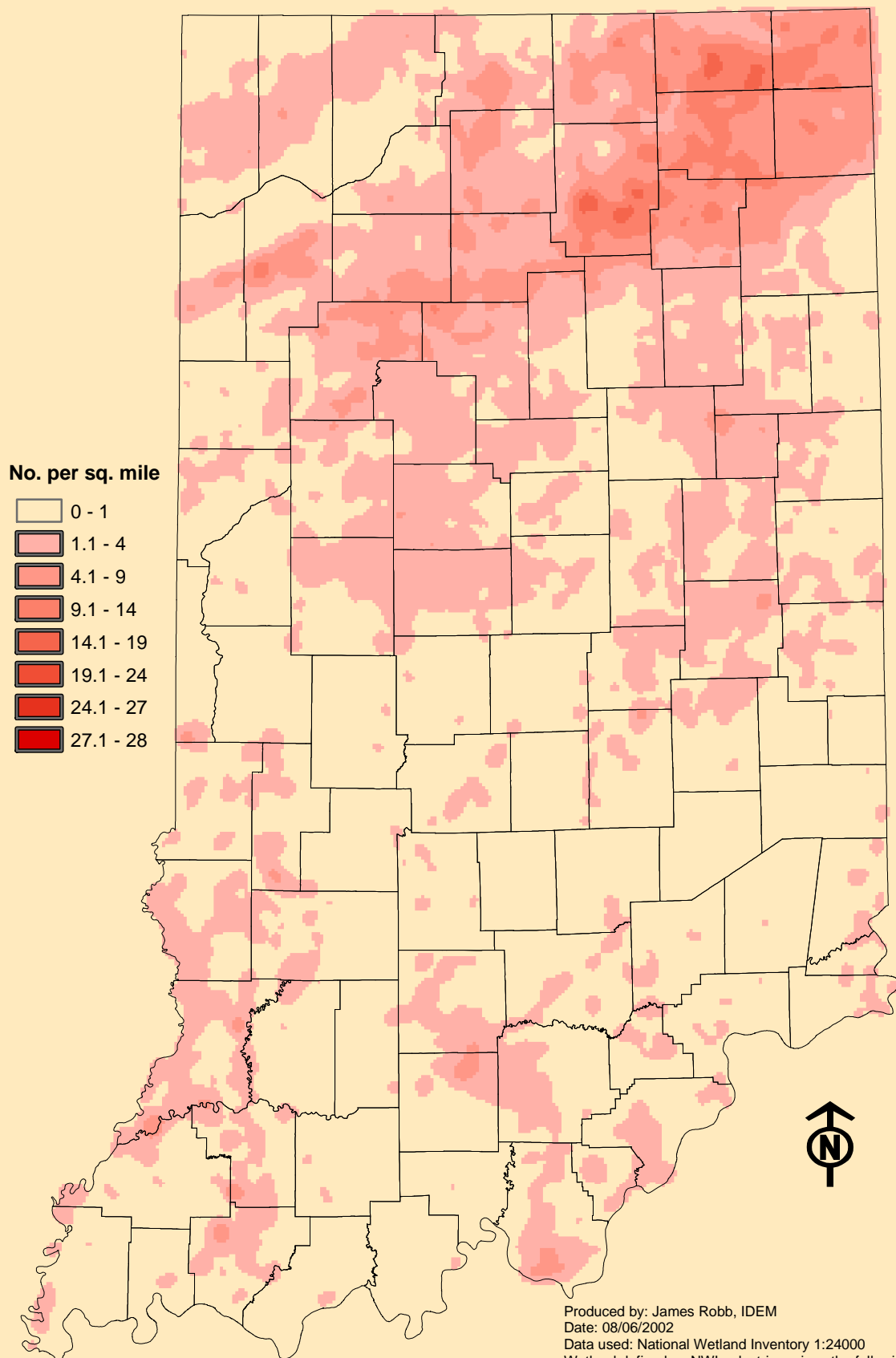
Indiana Wetland Density -- Less than 0.1 acre



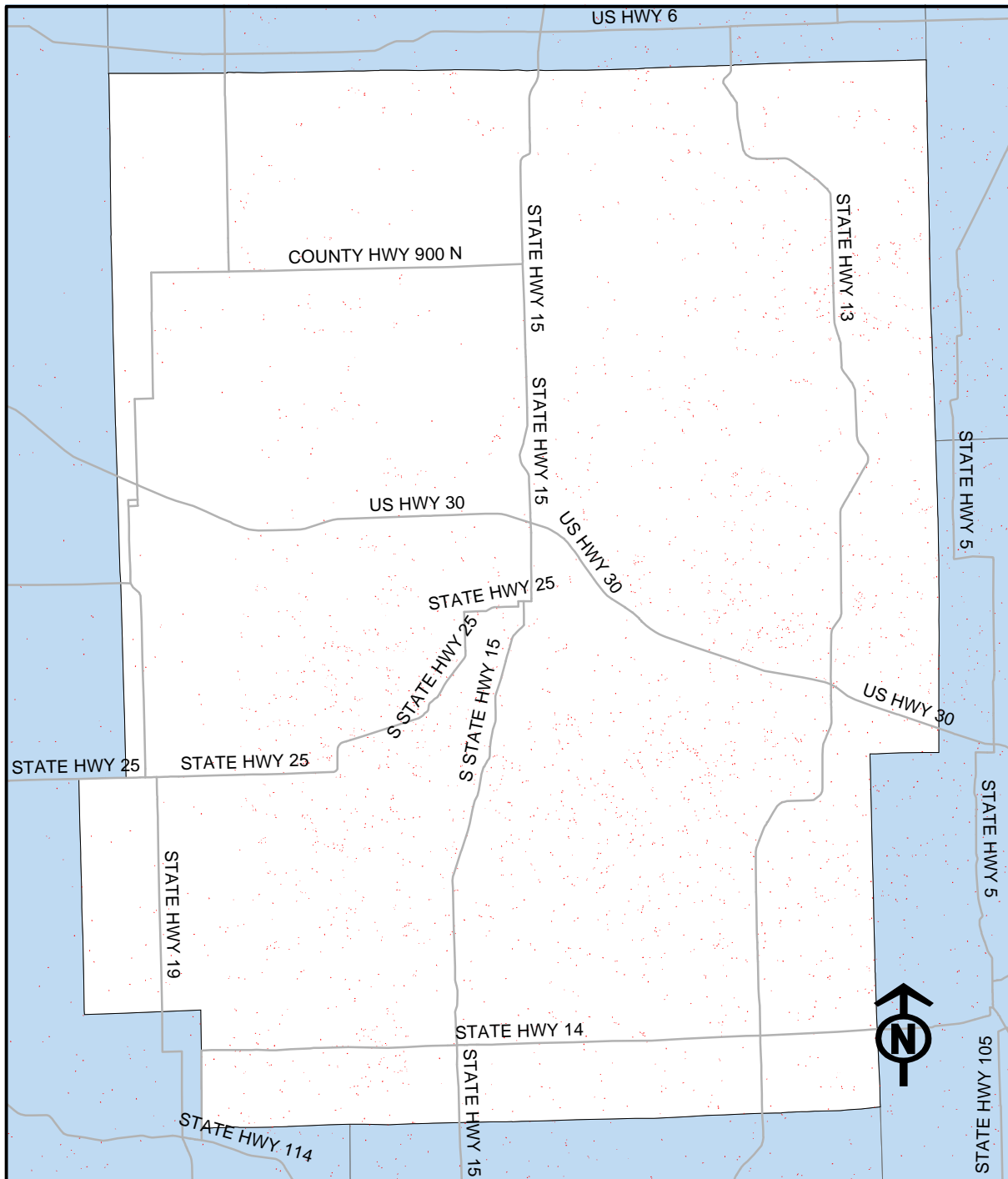
Indiana Wetland Density -- Less than 0.5 acre



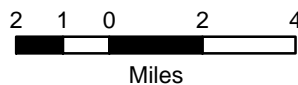
Indiana Wetland Density -- Less than 1.0 acre





Wetlands Less than 0.5 acre -- Kosciusko Example

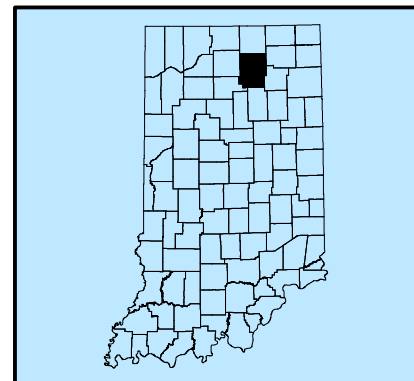


Produced by: James Robb, IDEM
 Date: 08/07/2002
 Data used: National Wetland Inventory, U.S. Census Counties, and ESRI Roads. "Wetlands" for the purpose of this map are areas classified as palustrine by the NWI, minus the following: rock bottom, unconsolidated bottom, unconsolidated shore, open water, and aquatic bed (except rooted vascular aquatic bed).

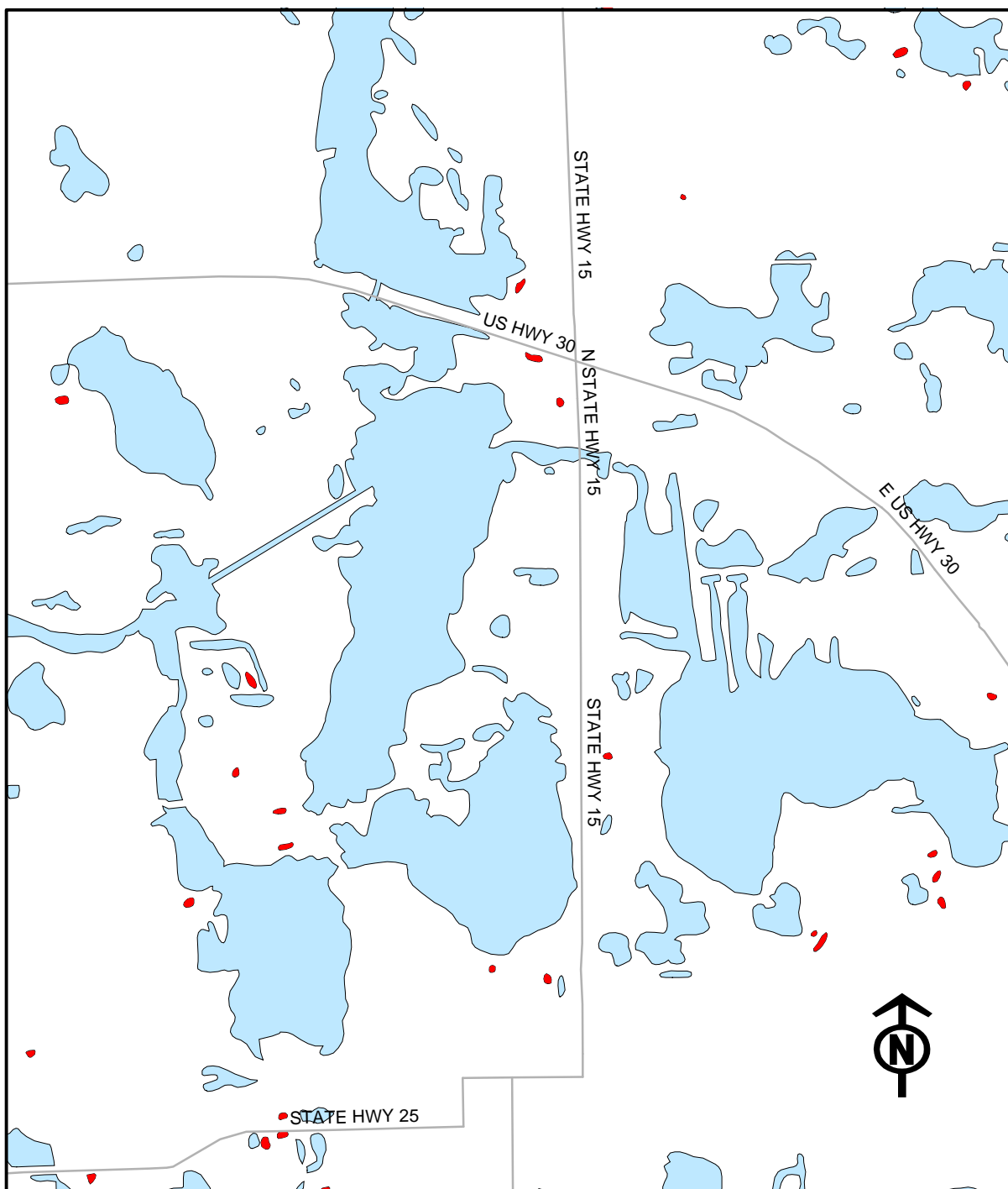


Legend

-  Highways
-  Wetland <= 0.5 ac



Wetlands Less than 0.5 acre -- Warsaw Example

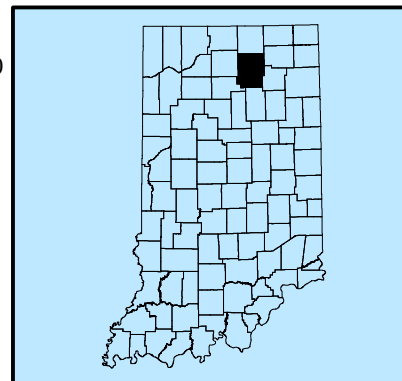


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Date: 08/07/2002
Data used: National Wetland Inventory, U.S. Census Counties, and ESRI Roads. "Wetlands" for the purpose of this map are areas classified as palustrine by the NWI, minus the following: rock bottom, unconsolidated bottom, unconsolidated shore, open water, and aquatic bed (except rooted vascular aquatic bed).

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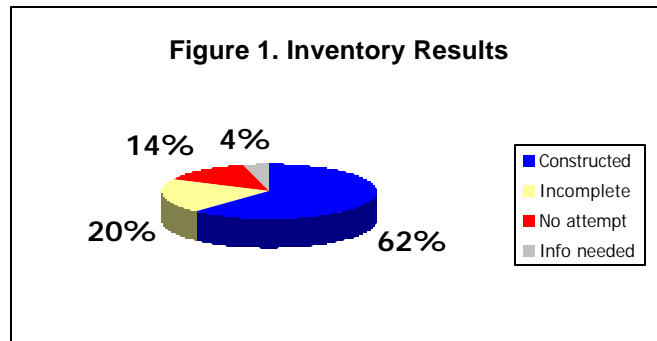
Legend

- Highways
- Wetland <= 0.5 ac
- All Waters

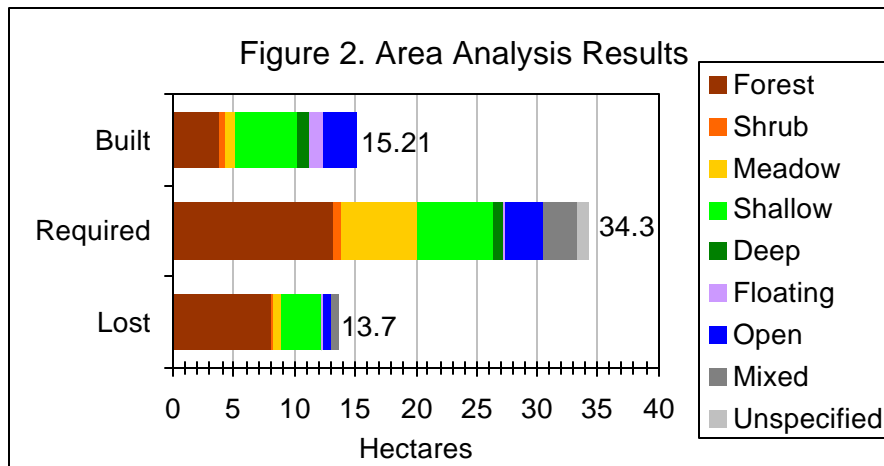


Wetland Mitigation Study Summary

In 1998 the Indiana Department of Environmental Management began a series of studies with the goal of quantifying wetland compensatory mitigation compliance and performance. IDEM first inventoried all 345 mitigation sites required between 1986 and 1996 and categorized them as constructed, incomplete, or no attempt (Figure 1). IDEM used Global Positioning System (GPS) techniques to map the total area of wetland, and the area of each wetland vegetation community, established at 31 randomly selected wetland compensatory mitigation sites in Indiana. IDEM required 34.31 ha (84.7 ac) in compensation for the 13.72 ha (33.9 ac) of state waters lost through the permit actions associated with these sites.



The mapping effort demonstrated that a total of 15.21 ha (37.6 ac) of wetland and other waters had established at these sites, a net gain of 1.49 ha (3.7 ac). Mapping of each vegetation community at these sites revealed that forested areas, which had a failure rate of 71%, and wet meadow areas (87% failure)



were harder to establish than shallow emergent areas (17% failure) and open water areas (4% failure). Compensation for this risk of failure would require minimum mitigation ratios of 3.4:1 for forested, 7.6:1 for wet meadow, 1.2:1 for shallow emergent, and 1:1 for open water.

Additional mitigation may be needed to offset the effects of temporal loss of wetland function. Although there was a net gain in area over all, forested wetlands experienced a net loss of 4.15 ha (10.3 ac) raising concerns that forested areas are being replaced with shallow emergent and open water community types.

Table 1: Failure Rates and Ratios		
Type	Failure Rate	Required : Built Area
Forest	71%	3.4:1
Shrub [†]	42%	1.7:1
Meadow	87%	7.6:1
Shallow	17%	1.2:1
Deep [†]	<0%	N/A
Floating [†]	<0%	N/A
Open	4%	1:1

[†] Too little of this type was included in the study to reach a reliable conclusion.

More information is available at: http://www.in.gov/idem/water/planbr/401/mitigation_monitoring.html . This study was published in *Wetlands*, a peer reviewed journal of the Society of Wetland Scientists: Robb, James T. 2002. Assessing wetland compensatory mitigation sites to aid in establishing mitigation ratios. *Wetlands* 22(2):435-440.